Supreme Court, U.S.
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No._____

IN THE SUPREME COURT OF THE UNITED STATES

JAMES D. BOSWELL, Individually and on behalf of all others similarly situated; VANESSA LACE BOSWELL, Individually and on behalf of all others similarly situated; SHAUNA MROSKI, Individually and on behalf of all others similarly situated

Plaintiffs-Appellants-Petitoner

v

BOARD OF TRUSTEES TEXAS CHRISTIAN UNIVERSITY (individual members (in their official capacities only); GEORGE BUSH, Governor, individual and official capacity; DANIEL JAMES, Major General, Adjutant General of Texas, LOUIS CALDERA, Secretary of the Army, National Guard Bureau Agency,

Defendants-Appellees-Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH

USDC No. 4:00 - CV-1526-Y, Fifth Circuit N0 00-11360 and USDC No. 4:98-CV-168-Y No-00-10698

PETITION FOR A WRIT OF CERTIORARI

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(a) Supreme Court Issues

Argument I. Whether Defendants presented clear and convincing evidence to rebut prima facie case of retaliation with respect to performance appraisals, promotion and career status pursuant to Federal and Texas Whistle Blower Protection Act?

Argument II. Whether 42 U.S.C. 2000d-7 is a valid exercise of Congress's power under section V of the fourteenth amendment to remove Eleventh amendment immunity to suits under Title VI.

Argument III. Whether 42 U.S.C 2000d validly removes immunity from suits due to Section 2000d-7 clear statement and Congress meaning and condition of acceptance of federal financial assistance.

Argument IV. Whether a court abuses discretion when new evidence of compelling nature warrants justification to vacate trial court summary and final judgment, a new trial, and leave to supplement the record.

Argument V. Whether the Doctrine of Res Judicata carries precedence over other doctrines e.g. the doctrine of administrative remedy, doctrine of foreseeability, doctrine of continuing violation and just compensation for constitutional and statutory violations.

Argument VI. Whether a military service member may be entitled to exceptions to Feres Doctrine for good cause when the doctrine fundamentally conflicts with the statutes.

Argument VII. Whether the court abused discretion for dismissal on grounds of lack of jurisdiction and grounds the claim is time barred.

Argument VIII. Whether the court ruled properly on whether appellants have stated a claim for which relief could be granted.

Argument IX. Whether the court recognizes an inherent unfairness and conflict of interest and whether new evidence may vacate a prior ruling.

CERTIFICATE OF INTERESTED PARTIES

(1) A. Number of the case and style Civil Action **N0 00-11360, In The U.S. Court of Appeals For Fifth Circuit**

JAMES DOUGLAS BOSWELL, VANESSA LACE BOSWELL, SHAUNA MROSKI, Individually and on behalf of all others similarly situated PLAINTIFFS -APPELLANTS

VS

BOARD OF TRUSTEES TEXAS CHRISTIAN UNIVERSITY, Individual members (in their official capacity only); GEORGE BUSH, Governor, individual and official capacity; DANIEL JAMES, Major General, Adjutant General of Texas; LOUIS CALDERA, Secretary of the Army, National Guard Bureau Agency DEFENDANTS - APPELLEES

THE NORTHERN DISTRICT OF TEXAS FORT WORTH USDC No. 4:00 - CV-1526-Y Whistle Blower and Federal Discrimination Case based on retaliation.

1 B. Number of the case and style Civil Action **N0 00-10698, In The U.S. Court of Appeals For Fifth Circuit**

James Boswell Plaintiff

verses

Donald H. Rumsfeld, The Secretary of Defense; ET AL

Texas Christian University; William E. Tucker; Dr. , Chancellor;

Michael D. McCracken Dean

THE NORTHERN DISTRICT OF TEXAS FORT WORTH USDC No. 4:98 - CV -168-Y

Whistle Blower and Federal Discrimination Case based on retaliation.

(2) **JAMES DOUGLAS BOSWELL, VANESSA LACE BOSWELL, SHAUNA MROSKI** have an interest because they sustained injury from defendant's actions. Each of the plaintiff's provided sworn affidavits concerning violation of constitutional rights, and damage.

(3) Defendants have an interest in this case. **BOARD OF TRUSTEES TEXAS CHRISTIAN UNIVERSITY, GEORGE BUSH, Governor, of Texas; DANIEL JAMES, Major General, Adjutant General of Texas; LOUIS CALDERA, Secretary of the Army, and the Chief of the National Guard Bureau Agency.** Donald H. Rumsfeld, The Secretary of Defense; Texas Christian University; William E. Tucker; Dr. , Chancellor;

Michael D. McCracken Dean The senior leadership of the Army, the National Guard Bureau, and Texas Adjutant General had a role in reprisal, retaliation, and in conspiracy.

(4) The District court has prejudice this case by threat of sanction: "Plaintiffs are cautioned that they may be sanctioned if they make any future attempts to litigate these claims in this court". As result, James Boswell feared that exercising a judicial right to file a petition of review of the Secretary of the Army's final administrative order, dated 6 December 2000, would result in additional retaliation. Plaintiffs assert abuse of court discretion and prejudicial effect. The District Court orders, and the Agency Final order, give the appearance depriving plaintiffs of the constitutional protections provided by the First and Fifth amendments and impartiality of the adjudicators for denying formal evidential hearings. Texas Christian University's affiliation with Judge Means, concerning the University's violation of law and Title IX statutes, and The Army Board's affiliation with the Secretary of the Army's, gives an appearance that defendant interest have circumvented the interest of the community, the public, and all individuals harmed in the process of retaliation. Had the Honorable Judge and the Army Board for Correcting Military Records required just compensation, subsequent to reviewing the records, records where defendants affirmation of retaliation conduct is undisputed, this may have removed the doubt of impartiality which currently prevails. This is not intended to be disrespectful to this Honorable Judge or any one else in the community. In whistle blower cases there is a community bonding. With a federal government employee, as plaintiff learned in a hard way, the reality is that redress of grievance is a right by name only. Erring this concern with this Honorable Judge was an intended priority given opportunity to meet with him during the requested hearings and one of the basis for requesting recusal.

(5) Connection and Interest. Internal and external forces exist to give Texas Christian University and the Army and advantage as already documented and complained about in the court record. Realistically, Texas Christian University has the power, money, clout and know how to insure the success of combining all these interests behind their own aim, and likewise, so does the senior leadership of the Army. Similarly, there is an inherent bias when the Army does an investigation on itself, or when an agency Board is formed to review an agency action. The

United States Supreme Court is requested to exercise equitable power of the court to remedy the plaintiff's perception of bias. Attorney for Record for Texas Christian University Defendants is Richard De Berry, McDonald and Sanders, 1300 Continental Plaza, 777 Main Street, Ft Worth Texas 76102 and for United States Defendants is Wayne Hughes, Jr. Assistant United States Attorney, 801 Cherry St. Suite 1700, Ft Worth Tx 76102-6897, and for Texas Government employees, Mr. Peter J. Strelitz, Capitol Station, PO Box 12548, Austin Texas, 78711-2548.

Request for Oral Argument

Oral Argument is requested. Appellant request to appear personally before this body and will perform in the same manner as before the Army Discharge Review Board. The Texas Veterans Commission states "From an institutional memory standpoint we have represented 250 cases. Army and Texas Christian University Authorities have substantially denied our client fue process. Recommend full relief. Texas Labor code Title 2, subtitle A, Chapter 21 Section 21.055 states an employee commits an unlawful employment practice if the employee retaliates or discriminates against a person who opposes a discriminatory practice, makes or files a charge, files a complaint, or testifies, assists or participates in any manner in an investigation, proceeding, or hearing. Appellant will show that he engaged in a statutorily protected activity, that the employer took an adverse personnel action, and that a casual connection existed between the two. ***Carney v. Amercian Univ., 151 F.3d 1090, 1095 (D.C. Cir 1998).*** Oral argument will be particularity be useful for the court's understanding of what military whistle blowers must face when faithfully executing the government's oath. In twenty minutes, appellant will efficiently brief systemic flaws and will answer candidly the intriguing questions for the Court and this will be useful in compensation for defamation of character.

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(d) Orders to be Reviewed

Boswell II (USDC 4:00 CV-1526 Y) was filed 5 September 2000, in the Federal District Court of Texas on the hills of Boswell 1 USDC 4:98 CV- 168 Y filed 23 February 23 1998. Boswell I and Boswell II commences TORT and punitive damage action against said defendants. In Boswell 1, Boswell motioned to reopen the case due to evidence acquired through late FOIA and acquisition of the final agency order and two government letters to sue. Motion was denied. So a new suit was filed - Boswell II - alleges that Title VI of the ***Civil Rights Act of 1964, 42 U.S.C. 2000d***, prohibits any "program or activity receiving Federal financial assistance" from "subject[ing] to discrimination" any person "on the ground of race, color, or national origin." By dismissing with prejudice Boswell I and Boswell 11, the court shielded the state actors. Yet the state shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of Title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.]and title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance. Because of the new evidence of conspiracy (addendum 3, page 10-36) Boswell plead that Boswell 1 be reopened. Boswell II (was assigned to Judge Means in Boswell 1), a new case was filed, with documentation for exhausting all administrative remedy against a more complete, accurate, and a more comprehensive list and **different actors**, but it too was dismissed claiming res judicata. On the same day, 11 September 2001 Boswell 1 and Boswell 11 embanc considerations were denied. Boswell 1 has resulted in request for EnBanc appeal N0 00 10698 (addendum 1) . Boswell 11 has resulted in request for EnBanc appeal N0 00-11360 (addendum 2).

(e) Statement of Jurisdiction

Date of judgment. The 5th Circuit Court of Appeals denied appellants petition for rehearing enbanc on 11 September 2001. The enbanc petitions and orders are contained in the appendix at addendum 1 and at addendum 2. Appellants timely appeal.

Jurisdiction. The jurisdiction of this court is invoked under 28 U.S.C. 1254 (1)

(f) CONSTITITUIONAL AND STATUTORY PROVISIONS INVOKED

Defendants violated the Statutory Tort provisions Prosser and Keeton 12 Infliction of mental stress; 36 Violation of a Statute; 91 Interference with use and enjoyment of private property; 92 Breech of contract; 102 Contributory negligence; 105 Misrepresentation; 111 Defamation; 112 Libel and slander; 121 Abuse of process; 124 interference with family affairs; 125 injury to members of the family; 130 Interference with perspective advantage; Undermining Public Policy; Common Law of expressed Contracts; Unlawful Retaliation

Defendants violated Texas Title II and the Texas Whistle Blower Act and *Whistleblower Protection Act ("WPA"). 103 Stat. 16 (1989) (codified in scattered sections of 5 U.S.C. and section 1034. Whistleblower Protection Act of 1989, Pub. L. No. 101-12, 103 Stat. 16 (1989) (codified in scattered sections of 5 and 10 U.S.C.) and components of 18 U.S.C (conspiracy) 28 U.S.C, 29 U.S.C., 31 U.S.C. 32 CFRs, 37 U.S.C. concerning pay and 42 U.S.C. (wide spread discrimination). Specifically Defendants violated Public Law 100-456 codified at section 1034 of Title 10 , Public law 103-353 (108 stat. 3158) paragraph 4314, Public Law 100-456 codified at section 1034 of Title 10 and 102-190 implemented by section 5 of the fourteenth amendment Appellants show the lack of compliance with the following* ***DOD Directives*** *DoD 5505.5 para 2, Para 4.3, 4.3.3, DoD Directive 7056.60, DD Directive 1332.28, and disregard for* ***Constitutional Amendments of the*** *First Amendment, Forth amendment, Fifth amendment, sixth amendment Eleventh amendment, thirteenth*

amendment, Equal Protection Clause and Due Process Clause of the Fourteenth, Amendment, Section 5 of the Fourteenth Amendment and Take Care Clause. Appellants will apply the Doctrine of foreseeability, Doctrine of Administrative Remedy, Continuing violation doctrine and challenge Doctrines of Res Judicata and Feres Doctrine by showing violations of Spending Clause, Art. I, § 8, Cl. 1, Article II of the Constitution .S. Const. art. II, § 3, Article III, Fifth amendment taking , Texas Education Code, Sec 61.001, Title IX of the Education Amendments. Specifically defendants violated the Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.Title VII of the Civil Rights Act Title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.]Texas Title II retaliation claims Appellants plead the defendants violated the following ***Government Acts:*** *Civil Remedies Act of 1986, October 1986, Texas Whistle Blower Protection Act of 1983,Soldier and Sailors Civil Relief Act of 1950, Crrupt Organizations Act, False Claims Act ("FCA"), and the Civil Rights Act of 1964. Via theDOD Military Whistle Blower Investigation H94L56226017. (July 1995), Office of Special Counsel case N0 MA 99-1931, EEOC complaint T 0279 TX A-04-99-L, the University Handbook for Faculty and University Staff and grievance policy, and Army Regulation 15-185, House Representative Bill 169, Senate legislation S-995, and Fderal Labor Complaint, appellants will earn a favorably ruling.*

STATEMENT OF THE CASE

September 11 2001 was the most tragic day America has witnessed. The military service member not only suffered the lost of comrades, friends, leaders but lost two legal related defeats in the 5th Circuit Court of Appeals (ruled 11 September 2001). Neglect has culminated over years. On 22 December 1986 Texas Christian University (TCU), a DOD contractor, directed that Army authorities discharge plaintiff (an Army Ranger second in command) from ROTC duty at TCU:

> **"He further asked that Major Boswell not be allowed to come back to campus at any time." (Army Colonel Bendele December 1986)**

In August of 1989, as causal effect from a relief and permanent change of duty officer evaluation performance report, plaintiff James Boswell was **unsuccessful** at an Amy retention board, was discharged, 12 April 1989, however, thanks to the Texas Veterans Commission opinion, March of 1993, plaintiff was successful at the Army Discharge Review Board:

> **"The applicant was rated beginning with an assertion that financial improprieties existed with the ROTC Cadet Fund Program "was victim of unfavorable actions". It is reasonable to assume that by revealing these irregularities, the applicant was at risk concerning the future of ROTC". Army Board (1993).**

And in 1994 the Pentagon refused to accept the Boards' findings. This was cause for concern for many leaders, internal and external, to DOD. As a consequence, in July of 1995, the Department of Defense Inspector General completed and released DOD Military Whistle Blower Investigation H94L56226017. The report summarizes the beginning as follows:

> **"On December 16, 1986, [illegible]. Boswell made 22 allegations to an Inspector General (IG) regarding misappropriation of cadet funds, sexual misconduct, by the instructor cadre, of a Reserve Training**

Corps ROTC detachment, and additional improprieties against his rating official. A subsequent IG investigation, on which a report was issued on April 10 1987 substantiated 9 of the allegations. (DOD whistle Blower report, July 1995)

Irrespective of the testimony that now alleges government fraud and conspiracy, the Whistle Blower investigation July 1995 provided impetus to the Army Board for Correction of Military Records (ABCMR) ruling May of 1997. This ruling expunged from the record unfavorable personnel actions, removed the officer evaluation report ending in December 1986 and declared the discharge from the Army void and to no effect. As partial restitution, the Department of the Army reinstated plaintiff to his former grade of Army Major, then involuntarily retired the applicant. Although clearly a favorable ruling by those who challenge government affairs, plaintiff appealed to the DOD Office of Hearings and Appeal and complained of failure to reinstate plaintiff **with seniority** and of the prejudice to the officer complete record and career illustrating the impact of missing reports, duty assignments, associated schools and awards. Direct promotion, due to the lack of a competitive file, was the method for the applicant to be made whole again, short of an award of damages from a Federal District Court. On 3 August 2000, DOHA denied the appeal. Critical requirements for promotion are present in the files of peers who did not have to indulge in whistle blower treatment and after effect. In 1999, Plaintiff filed a petition for agency review in the 5th Circuit Court of Appeals where the United States opined with two issues 1) that the petition was premature citing that the ABCMR action was not yet finalized and plaintiff had not exhausted administrative remedy and 2) the Federal Claims Court had exclusive remedy[1]. On 28 August 2000 plaintiff was

[1] Concerning 99-60398), "Boswell has petitioned this court for review of his final settlement of back active duty and retired pay, as a result of a decision by the Army Board for Correction of Military Records (ABCMR)... The law in this Circuit is clear. Failure of a plaintiff to exhaust intra

provided an agency monetary settlement in compliance with the Back Pay Act. On 6 December 2000 the ABCMR reopened the case and found additional error, and directed correction and that another promotion selection board convene. Effective in 1987, due to government interference, plaintiffs lost the family home. Shauna Mroski, Vanessa Boswell, and James Boswell were separated. We all lost University education benefits and on April 12 1989 plaintiffs lost all government benefits. Each Plaintiff suffered injury from breach of contract and intentional discrimination and retaliation for plaintiff complaining of program fraud and Title VI, VII, and IX violations. TCU service, in exchange for receipt for Federal Title IX title funds, was compromised by misconduct and **intentional discrimination** to cadets and employees. TCU employees and cadets who witnessed and reported the corruption were wrongfully and prematurely terminated. They include Plaintiff and Fant and Dunlap CR 18, Becker 393, Douglas 397, Tucker 499, Weiler 109. The Government's promise for a three year tour or for an education, which employeees and students relied on, was breached for regulatory, discriminate and arbitrary reasons. For plaintiff, duty assignment at Texas Christian University, Fort Worth Texas ended: The house valued at $ 90,000 and potential equity in this home and another home was lost. Takings due to regulatory reasons occurred. *Click 970 F.2d at 109*. The Veterans Administration repossessed the Fort Worth home in 1990. Federal Bankruptcy proceedings in 1991 caused loss of second home plaintiff had owned since 1977. Besides the economical injury, plaintiffs suffered from the government's intentional emotional injury and TORT, actions which are not within the jurisdiction

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service administrative remedies deprives this court of jurisdiction . *Von Hoffburg v. Alexander, 615 F. 2d 633, 637-38 (5th Cir. 1980) and Hodges v. Callaway, 499 F.2d 417, 420 (5th Cir. 1974).* Accordingly, this court (Court of appeals) should dismiss the appeal until Boswell has exhausted administrative remedies." Court of Federal Claims has exclusive jurisdiction. ... Case must be filed with the U. S. Claims Court.

of the Claims court and were refused. On 5 September 2000 plaintiff filed a civil rights, WPA, and retaliation action in the Northern District Court of Texas. On or about 9 September 2000, noting the different jurisdiction requirements between the Federal District Court and Court of Federal Claims, Plaintiff filed a petition for review of final agency action in the Court of Federal Claims 00-CV-547C citing the *Federal Claims Case In Carla Thomas v U.S.A. N0 98-770C filed 31 July 2000.* Appellants have not been afforded a formal hearing either by the ABCMR or through court proceedings. The only hearing, incidentally, successful to petitioner, was before the Army Discharge Review Board traveling panel in Dallas. The U. S. Army Claims provided waiver to sue, 14 April 2000 but the district court ignored this right claiming Res Judicata. In 1992 plaintiff entered the Guard and again found contract fraud. Again the government breached a second contract and discriminated based on religion and retaliation. The EEOC provided waiver, 13 June 2000 in complaint T -0279-TX-A-04-99-L submitted 5 April 1999 through the Texas Guard but the District Court ignored this right, claiming again res judicata. The Office of Special Counsel case N0 MA 99-1931 and Merit Systems Protection Board's ruled lack of jurisdiction on plaintiff's civil service claim on 10 and 29 September 1999. Plaintiff submitted this unfair labor practice as part of the DC composite package. The Trial court refused to take notice of the agencies statutory obligation to hear violation of labor law and to consider all circumstances of fraud which had impact on the adverse personnel actions. Judicial proceedings would be moot had the ABCMR ruled as with *Diaz* (reinstatement with two grade seniority) or had Claims Court ruled the ABCMR ruling was arbitrary as with *Bond v United States N0 95-441C filed September 12, 2000.*

As of December 2000, appellant's involuntarily retirement is affirmed.

STATEMENT OF ANY FACTS

Plaintiffs plead Agency abuse for violating Congressional Intent "to make whistle blowers whole again", ignoring 29 U.S.C. 1109, 32 C.F.R. 562.4 (e) and 32 CFR 588.26 and section 1034 of Title 10 531. *Walker v United States N). 759 C Federal Court of Claims filed 7 April 1998, Angela Moris and Stacy Handley v Regents of the University of Colorado N0 96-1555, Zentgraf v Texas A & M , 492 F. Supp 265 (S.D. Tex 1980),* and for not recognizing the applicant had a duty to report violations of government contract agreements, civil rights, sexual misconduct, and misapplication of fiduciary property. Complainant accuses the Military Department and defendants with cover up and violation of federal and state retaliation law causing injury to the applicant and two daughters. In *Kindred v United States* the Court of Claims required the filing of a joint status report concerning damages. In Boswell eleven claims are listed Court Record (CR) page 3. Page 6, plaintiffs plead fraud and conspiracy[2], and establish jurisdiction in a Federal District Court. On page 31, plaintiffs define statutory relief. On 16 December 1986 Plaintiff complained of program fraud and racial discrimination. On 22 December 1986 defendant violated DOD agreement and unlawfully breached the contract and commenced regulatory taking actions without due process. Attributed to unlawful Government retaliatory interference for plaintiffs protected disclosure concerning program fraud, on April 12 1989 plaintiff's Army officer commission as an active duty regular Army Major was terminated. Plaintiff entered civil service as a GS 7 and as an Army Technician in the grade of **Sergeant** in November 1992. Starting in 1993, complainant provided the Texas Guard protected disclosures of program fraud. A DOD investigation May of 1995 concluded violation of plaintiffs due process and unlawful retaliation for the

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[2] Conspiracies under **18 U.S.C. & 241 and 28 U.S.C. 1343.** Plaintiff shows evidence of the felonious crime of conspiracy and proves the two elements required to substantiate and justify damages. An agreement was executed. At least one of the co-conspirators performed an overt act independent of the agreement for the purpose of bringing about the object of the conspiracy.

discharge in 1989. In May 1997 the ABCMR expunged all records relating to the termination action from the University and declared the Army discharge 12 April 1989 as void. In civil service, in the Texas National Guard on 15 October 1998, plaintiffs Union President notified the agency of a failure to bargain in good faith concerning protected disclosures involving program fraud, pornography, and discrimination. On 22 October 1998 a court reporter factually reports the arrest of plaintiff's co-worker for solicitation of sex with a child and possession of boy nude photographs. In November 1998 the EEOC investigated discrimination based on religion and retaliation. On 23 March 1999 Senator Phil Gram's endorsed the conspirators' confession of witness intimidation and criminal connection showing Defendants bad faith concerning the program fraud on active duty. From January 2000 through September 2000 several witnesses provide affidavits which show that six black employees were victims of illegal discrimination. On 5 February 1999 Plaintiff received a retaliatory discharge from civil service. On 15 April 1999, the government released FOIA material describing the program fraud in 1993 and containing a citation where an Army Colonel (now General Bisson) was recommended for discipline for retaliation against plaintiff. On 28 August 2000 plaintiff received back pay. On 12 September 2000 the Federal Labor Relations Board (Dallas Region) cited the Texas National Guard and Army General Daniel James with an unfair labor practice - retaliation in the work place. On 6 December 2000, the ABCMR ruled favorably on a personnel issue and directed plaintiff be considered for promotion to Lieutenant Colonel. The ABCMR proffered that the termination from active duty was arbitrary and of no effect. Plaintiffs still grieve and seek damages. Army Lieutenant Colonel James Bright's confession, access to investigations, and discovery via FOIA will allow members of a reasonable Administrative or Judicial tribune to deliver justice. Prior to

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Section 1985 of Title 42 provides for recovery of damages and for redress.

TCU and Army retaliatory conduct, appellant James Boswell was "an outstanding officer" and was offered a promotional job. Evaluations reflect he was rated as the best TCU ROTC instructor for fall of 1986. The discrimination began in 1986 one assignment earlier with Commander McCarthy in Germany. The treatment continued under Commander Stacy at TCU, and came to peak under Commander Parrish in the Texas National Guard in 1999. TCU, Army, and the Texas National Guard refused to grant Boswell employment and awards out of discriminatory animus directed toward his status for reporting violations of a government contract (protected disclosures) to the Agency Inspector General. Appellant reports of program fraud in each assignment and his opposition for sexual and racial harassment and superior misconduct in violation of the Uniform Code for Military Justice caused plaintiff to become member in the whistle blower protected class. This treatment continued in the Texas National Guard while appellant performed in a demotion status from Major to Sergeant for seven years while the ABCMR spent three years deciding the ruling. Meanwhile, Boswell received inhumane treatment and was victim of continued discrimination and retaliation (Payne affidavit addendum 3, page 51-56) sufficient for resignation on the basis of a constructive discharge. Plaintiff served as a Sergeant without promotion for seven years. This was unusual for a Command and General Staff graduate with a Masters in Public Administration. As for accountability, the government operated through four Commanders LTC McCarthy, LTC Stacy, LTC Parrish, and Colonel Bisson. Each commander reprised against petitioner after complainant disclosed wrongful activity to the authorities. In 1997 and 2000 the ABCMR failed to recognize the severity of retaliation and the ten year impact on the record and denied plaintiff direct promotion to Army Colonel. The non whistle blower received favorable promotion and education benefits, benefits Boswell was denied. From the beginning,

the government's withholding of discovery has prejudiced and delayed proceedings from 1986 -2001.

COURSE OF OTHER PROCEEDINGS AND DISPOSITION OF THE CASE

The United States Court of Appeals for the Federal Circuit in case 01-5096 has accepted the appeal to 00-CV-547 and appellants reply brief was mailed 15 November 2001. On 16 November 2001, the Federal Claims Court accepted plaintiff's Petition for Review 01-649C and has assigned it to arbitration. These cases have narrow jurisdiction and do not interfere with the outcome of the Boswell cases in the Federal District Circuit. Boswell II (USDC 4:00 CV-1526 Y) was filed 5 September 2000, in the Federal District Court of Texas on the hills of Boswell 1 USDC 4:98 CV- 168 Y filed 23 February 23 1998. Boswell I and Boswell II commences TORT and punitive damage action against said defendants. In Boswell 1, Boswell motioned to reopen the case due to evidence acquired through late FOIA and acquisition of the final agency order and two government letters to sue. Motion was denied. So a new suit was filed - Boswell II - alleges that Title VI of the ***Civil Rights Act of 1964, 42 U.S.C. 2000d***, prohibits any "program or activity receiving Federal financial assistance" from "subject[ing] to discrimination" any person "on the ground of race, color, or national origin." Individuals alleging violations of these prohibitions have a private right of action against persons receiving federal financial assistance and their officials. See ***Pushkin* v. *Regents of the Univ. of Colo.*, 658 F.2d 1372, 1381 (10th Cir. 1981); see also *Franklin* v. *Gwinnett County Pub. Sch.*, 503 U.S. 60, 76 (1992); *Cannon* v. *University of Chicago*, 441 U.S. 677, 705-706 (1979).** By dismissing with prejudice Boswell I and Boswell 11, the court shielded the state actors. Yet the state shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of Title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.]and title VI of the

Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance. According to the allegations of the complaint, defendants, Texas Christian University and the Adjutant General of Texas received federal financial assistance. (see addendum 3, pg 57-58) Plaintiffs allege that, in distributing this money, along with state funds, defendants use a formula that discriminates on the basis of race, national origin, and disability without any substantial legitimate justification. Government Defendants were successful in dismissal of Boswell 1's initial pleadings citing that the alleged constitutional violations do not provide waivers of immunity, the whistle blower statute does not waive sovereign immunity, Title Vll does not apply to active duty military personnel, that statute of limitations have run, that the tort claim is barred as a matter of law because Boswell has not filed an administrative claim, that the court lacks jurisdiction because it exceeds the $ 10,000 limit, and that promotion is nonjustifiable. TCU defendants motioned for summary and final judgment citing inapplicability of Texas Whistle Blower Act, 10 U.S.C. section 1034, 29 U.S.C. 2615, and 42 U.S.C. 1981 and 2000e-5 because plaintiff was not employee of TCU and was not a member of a minority race, and that TCU did not falsely imprison Plaintiff. Because of the new evidence of conspiracy (addendum 3, page 10-36) Boswell plead that Boswell 1 be reopened. Boswell II (was assigned to Judge Means in Boswell 1), a new case was filed, with documentation for exhausting all administrative remedy against a more complete, accurate, and a more comprehensive list and **different actors**, but it too was dismissed claiming res judicata. On the same day, 11 September 2001 Boswell 1 and Boswell 11 embanc considerations were denied. Boswell 1 has resulted in request for EnBanc appeal N0 00 10698 (addendum 1) . Boswell 11 has resulted in request for EnBanc appeal N0 00-11360 (addendum 2).

SUMMARY OF THE ARGUMENT

Appellants make nine arguments. Public Law 100-456 codified at section 1034 of Title 10 and common law and the equity standards set forth in public law 103-353 (108 stat. 3158) paragraph 4314 govern. The Court may rely on Federal discrimination law, or Texas retaliation law (Title II or Texas Whistle Blower Act of 1983 WPA) to "provide an entire remedy," including "restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records or model 28 U.S.C. § 1491(a)(2). *McGILL v USA, 97-769C filed November 16, 1998.* (*Skinner v. United States, 594 F.2d 824, 219 Ct. Cl. 322 (1979); Sanders v. United States, 594 F.2d 804, 219 Ct. Cl. 285 (1979); Burd v. United States, 19 Ct. Cl. 515 (1990); Casey v. United States, 8 Ct. Cl. 234 (1985)), restoration to military office,, Yee v. United States, 512 F.2d 1383, 206 Ct. Cl. 388 (1975); Murphy v. United States, 16 Cl. Ct. 385 (1989) Gant v. United States, 18 Cl. Ct. 442 (1989*); Federal District Courts rely on the Federal Court of Appeal Circuit on such matters as promotions while the court of Claims relies on the District Court for Tort, Discrimination and Retaliation Claims in Violations of the WPA. *Mitchell v. United States, 930 F.2d 893, 896 (Fed. Cir. 1991).* Contract victims requests incidental or collateral relief that Congress intended incident of and collateral to" a money judgment. 28 U.S.C. § 1491(a)(2) (1994). *Bobula v. United States Department of Justice, 970 F.2d 854, 859 (Fed. Cir. 1992). 37 U.S.C. § 204 (1994).* If an officer of the Armed Services is wrongfully discharged, the right to pay conferred by § 204 continues and serves as the basis for Tucker Act jurisdiction. In a concise statement of facts, Plaintiffs provide violation of the contractual arrangement and denial of constitutional civil rights. Reassignment to another installation had substantial causal effect. First, effective 22 December 1986, plaintiffs' were denied "the full and equal enjoyment of goods, services, facilities, privileges, advantages, or

accommodation of TCU, a place of public accommodation. This Army/TCU directive remains in effect as of the filing of the petition (December 2001). Second, on April 12 1989, the government deviated from the terms of the contract by taking a money entitlement and this continued until August 29 2000. The compensation for ten years in back pay was without interest and is considered as unequal treatment compared to civilian and federal civil service counterparts. Continued employment on active duty and civil service was a substantive right, which is enforceable against the United States for money damages **(Tucker Act under 37 U.S.C. 204).** Loss includes a career profession, numerous associated takings, causal effect; e.g. loss in privileges and medical benefits and impact to daughters' economic and social status in the community. The court may provide ancillary relief for wrongful discharge. The 3rd breech of contract came as a failure of the Agency to make plaintiff and family members whole again. Because of the Pentagon's protected bias, this prejudice carried over to the Board. The result was an incomplete officer file when compared to others: The special selection boards denied plaintiff promotion on two consecutive occasions. The ABCMR retired plaintiff at the same grade of Major, the grade plaintiff had already obtained prior to the unconstitutional 5th amendment taking. Plaintiff contested the lack of back pay from the ranks of Lieutenant Colonel and Colonel. *Mitchell v. United States, 930 F.2d 893, 896 (Fed. Cir. 1991).* The independent statute the ABCMR and DOD Inspector General cite for authorizing back pay and reinstatement are Title 10 U.S.C. 1552, DoD Directive 1332.28, Directive 5505.5, Public Law 100-456 codified at section 1034 of Title 10 and 102-190 implemented by DoD Directive 7056.60. Judgment is appropriate out of equity on breech of Department of Army Policy and DoD contract agreement and pursuant to Congressional mandate for and Texas law for liquidated and unliquidated damages. Army policy coupled with Title 10 jurisdictional statute warrants waiver of sovereign

immunity which could fairly be interpreted as mandating recovery of compensation from the government e. g. making plaintiffs whole again. The ABCMR ruling on the contract and taking claim is not depositive. Takings occurred as a result of exercising the First Amendment right to free speech - an action adjudicated in the District Court. Plaintiff has no recourse with the Military Department or under the CSRA. *Kennedy v. United States, 5 Cl. Ct. 792, 793 (1984)* in the claims court for discrimination. State Defendant failed to reasonably apprise plaintiff of beneficiary rights and obligations and taking of $ 34,000 due to loss of dual status pay. Concerning the $3,000 from the Veterans Affairs debt, the VA agrees (addendum 3, pg 67) to relinquish on grounds for equity. Had plaintiff been apprised he would loose his civil service career and the $ 34,000, he would have chose another career in the private sector. This court may find that as with an ERISA complainant "ambiguities in the contract are to be resolved against the drafter, in the employees favor". *Tabb Lakes, Ltd. v. United States, 10 F.3d 796, 802-03 (Fed. Cir. 1993).* This civil service contract was cut short from its longevity. Redress shows Constitution violation and arbitrary and capricious actions. This renders the Agency as suspect for intentional infliction of emotional harm, civil rights violations, and for retaliation, issues for the District Court to decide. The Army failed to follow regulatory procedures by failing to seek an advisory opinion from the Texas Guard and National Guard Bureau as was accomplished in *Diaz*. In *Cunningham v U.S.A. No. 97-499C, (Filed January 12, 1998),* the ABCMR ruling was remanded to respond "Was the error in plaintiff's OMPF "material" or "harmless," such that plaintiff was prejudiced?" A blank file is inherently detrimental and prejudicial. The Agency had obligation to do more *Sanders v. United States*, 594 F.2d 804, 810 (Ct. Cl. 1979) in a case of involuntary discharge or wrongful termination. *Adkins v. United States, 68 F.3d 1317, 1321 (Fed. Cir. 1996).* Jurisdiction with respect to contracts extends to express or implied-in-fact contracts

and is not based upon contracts implied-in-law. *Hercules Inc. v. United States, -- U.S. --, 116 S. Ct. 981, 985 (1996)(citing Sutton v. United States, 256 U.S. 575, 581 (1921).* An agreement implied in fact is 'founded upon a meeting of minds from conduct of the parties showing, in the light of the surrounding circumstances, their tacit understanding. *Baltimore & Ohio R. Co. v. United States, 261 U.S. 592, 597, 43 S. Ct. 425, 426-427, 67 L. Ed. 816 (1923*). The following elements were present: "a mutual intent to contract including offer, acceptance, and consideration; and authority on the part of the government representative who entered or ratified the agreement to bind the United States in contract. *Trauma Serv. Group v. United States, 104 F.3d 1321, 1325 (Fed. Cir. 1997).* Family planning is based on trust of contract. The Takings Clause of the Fifth Amendment states: "nor shall private property (property interest) be taken for public use, without just compensation." U.S. Const. amend. V. Employment labor laws and contracts are violated. The District Court has jurisdiction.

ARGUMENT AND AUTHORITIES

Standard for Review. The United States Supreme Court must affirm the Appeal Court's decision unless it is (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (2) obtained without adherence to procedures required by law, rule, or regulation; or (3) unsupported by substantial evidence. ***5 U.S.C. § 7703(c) (1994).*** Boswell witnessed disparate treatment of women and blacks in the Guard and at the University. On appeal, disputes arose; yet defendants do not dispute retaliation. Once an employee establishes a prima facie case of retaliation under the WPA, the burden shifts to the agency to prove by clear and convincing evidence that it would have taken the same personnel action in the absence of the protected disclosure. ***5 U.S.C. § 1221(e) (1994); Carr v. Soc. Sec. Admin., 185 F.3d 1318, 1322 (Fed. Cir. 1999).*** The Court has obligation to use the framework for analyzing a retaliation claim as used in the employment discrimination context of

Sherrod v. American Airlines, Inc., 132 F.3d 1112, 1122 (5th Cir. 1998). Petitioner established a prima facie case of unlawful retaliation on two accounts. Reporting the sexual impropriety concerning sexual intercourse in the ROTC environment and pornography in civil service Texas Guard context involved supervisors. The burden shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the retaliation and adverse employment action. Boswell contends that the Northern District Court of Texas and 5th Circuit Court of Appeals erred (1) in accepting Defendants arguments and not requiring defendants to meet the burden (2) failure to acknowledge investigations which document lack of due process (3) and by not granting motions for recusal and discovery. Abuse of discretion should be reviewed, as was in *Rubenstein*, under a deferential abuse of discretion standard. See *Geiserman v. MacDonald, 893 F.2d 787, 789 (5th Cir.1990); Hodges v. United States, 597 F.2d 1014, 1018 (5th Cir.1979).* Boswell, as Professor Rubinstein, maintains error that law requires broader discovery into Army-Texas Guard wide tenure and promotion decisions. Boswell relies on *Travis v. Bd. of Regents of Univ. of Texas, 122 F.3d 259 (5th Cir. 1997) and Duke v. University of Texas at El Paso, 729 F.2d 994 (5th Cir. 1984).* In *Travis*, as in Boswell, the plaintiff alleged sex-discrimination. Boswell alleges Title VI, Title VII, and Title IX discrimination in significant government contracts.

Argument I. Whether Defendants presented clear and convincing evidence to rebut Boswell's prima facie case of retaliation with respect to performance appraisals, promotion and career status pursuant to Federal and Texas Whistle Blower Protection Act? Appellants claim is for corrective action under the Texas Whistle Blower Statute and ***Whistleblower Protection Act of 1989, Pub. L. No. 101-12, 103 Stat. 16 (1989) (codified in scattered sections of 5 and 10 U.S.C.).*** On five separate occasions, Boswell reported protected disclosures to a Defendant or

investigative authority. Each time, Defendant responded with reprisal. Protected disclosures included violations of Uniform Code to Military Justice, Agency and University Policy as detailed in Army Directives and the University Handbook for Faculty and University Staff and grievance policy, Title Vl, Title VII and Title IX. Appellant witnessed command abuse and appellant felt the health, welfare, and safety of students, soldiers and employees were in danger of loosing basic fundamental constitutional rights. As example in the Fort Worth public facility in Texas National Guard, appellant felt that children could be exposed to the sex videos watched by plaintiff's supervisor, an Army Captain, during duty hours or to unnecessary exposure to a co worker suspected sexual impropriety (subsequently convicted of a sexual felonious crime. Boswell experienced hostility and adverse personnel actions after each EO, Union, or IG complaint. Defendant Secretary of the Army claims to have voided/corrected the record on three occasions (evaluations ending in Dec 1986, Apr 1989 and the discharge from the Army action) but overlooks the overall impact to appellant's career. Prior to becoming a whistle blower, Boswell received excellent performance appraisals starting in 1972 where Boswell received a distinguished hand shake for becoming honor graduate from now CNN Military analyst, General David Grange (then Colonel Commandant of the U.S. Army Ranger School). The rating on active duty which Boswell received before becoming a whistle blower, was marked by promote to Lieutenant Colonel and select for Battalion Command. The DOD IG reports the evaluations were near identical and sufficient for the Department of the Army to promote the service member to the grade of Army Major in 1984. Likewise, performance was sufficient for the Texas Guard to select Boswell as runner up 2nd Brigade **Sergeant** NCO of the Year in 1994. TCU wrongfully terminated Boswell from an ROTC assignment ending in a relief for cause efficiency report and wrongful termination with a career ending evaluation in April 1989 had degradation of an

award. After a year in the Guard, the Adjutant General's Chief of Staff (Koehlor, CR 190) writes "He swallowed his pride and accepted the challenge". The Texas State Command Sergeant Major writes committed to professionalism; own integrity would not allow to look away from wrong doing. (CR 187). Pending administrative remedy and appeal, the Texas Agency defendant violated the Technicians civil service contract by denying Boswell an ending performance rating, reneging on a promise of job selection as a Major, and by termination from civilian employment without redress to the EEOC and WPA complaints. Boswell received an estimated 13 support letters from the Guard CR 182 - 190 and two offers to testify in federal court. By not ruling as in **Stanley Larson v Department of the Army, United States Court of Appeals for the Federal Circuit, 00-3041, August 14, 2001,** the Appeals court abused discretion. In Larson, the ruling cited "Because the Board's decision is based on an incomplete and inaccurate review of the record, we vacate and remand". In Larson, remanded on appeal, the Administrative Judge ultimately ruled in favor of the Army, finding that the Army had rebutted this prima facie case by presenting clear and convincing evidence that it would have taken the personnel actions in the absence of the protected disclosures. But the Appeals' Court agreed with Larson that the AJ's conclusion is based on an erroneous and incomplete evaluation of the record. By 5th circuit ruling, Boswell was required by Texas WPA law to exhaust remedy. (see **Breax v. City of Garland v.205F.3d 5th Cir 2000)** Boswell filed a WPA action with the Military and with the Office of Special Counsel requesting corrective action under the ***Whistleblower Protection Act ("WPA"). 103 Stat. 16 (1989) (codified in scattered sections of 5 U.S.C. and section 1034.*** The Administrative Judge ("AJ") assigned to Boswell's case held lack of jurisdiction (addendum 3, 65-66), that Boswell was an employee of a non-federal entity. In December 2000, the Army's grant of back pay and reinstatement inferences that the burden of establishing a prima facie

case of retaliation under the Military WPA was met. Specifically, the board found that due process was violated and that Boswell's protected disclosures were a contributing factor in the challenged personnel actions but failed to address the Texas Guard claim. In compliance with the Texas Whistle Blower law and the 30 day rule for exhausting administrative remedy (see addendum 3, page 59 right to sue letter, dated 23 Feb 2000) Boswell filed the Texas WPA action in the 67th District Court, Tarrant County Court NO 067-182444-00, 24 March 2000. Attorney for the State of Texas moved the action to Federal Court 400-CV- 1440e and it was dismissed without prejudice on 5 September 2000, and refiled on the same day (adding federal respondents and federal statutes) as 400-CV-1526. In Boswell ll appellants motioned for recusal and cited abuse in discretion and perceived prejudice in applying the provisions of the Soldier and Sailors Act of 1950 in Boswell I. The court ignores testimony of pretext on motive that individuals who ultimately caused the removal from service, communicated adverse employee threats that if appellant continued to file grievance with authorities such as the IG and EEOC, he would ultimately pay the price. Testimony is corroborated through the ten witnesses addendum 3, pages 10-56 who show motive to retaliate. In **Larson**, timing was noted:

> **"It seems unlikely that McBride could have completed his investigation and informed Larson as to his conclusions so early on the same morning that he first learned of Larson's concerns".**

Similarly, in Boswell it appears unlikely that the Federal Judge would rule on the very same day a suspense was due unless the suspense was prefabricated. Plaintiffs Army supervisor, Sam Kinser, addendum 3 page 47 explains to the court appellant's sickness and cause for a one day extension to respond to summary judgment. Appellant obtained opposing attorney consent and faxed the court a letter, then followed up by filing the response the following day. The Court did not consider the

response. In Larson the Appeals Court concluded that the AJ's findings for "no motive to retaliate", was based on an erroneous evaluations of the evidence. Evidence in Larson and Boswell lends credibility to Appellant's contention that the investigation and ultimate approval by the investigators occurred after the hiring authority had proposed/directed suspending the retaliators. In Larson a witness attests to the hostility. In Boswell witnesses (addendum 3, pages 10-58) Payne, Weiler, Lynn, Kinser, Bice, HayHurst, Bright, Fant, Mroski, Darnell describe the hostility defendants exhibited toward Boswell. Credibility findings are ordinarily entitled to great weight. **See Hambsch v. Dep't of Treas., 796 F.2d 430, 436 (Fed. Cir. 1986).** Here, the Trial and 5th Circuit Appeal decisions contain no findings with respect to the credibility of these witnesses. The court fails to mention any of this testimony in the decision. Under these circumstances, this court cannot conclude that the Judge properly rejected this evidence. In light of these factual errors and the Judge's incomplete treatment of the testimony in the record, this court cannot accept the determination that justice is served. Appellants provide clear and convincing evidence that Boswell's adverse actions and the harm to family members was because of causal effect from the protected disclosure. This determination is supported by substantial evidence. ***5 U.S.C. § 7703(c) (1994) and by military experts Marine Colonel Ezzell, Army Colonel Parnell, Army General Wetzel and Lieutenant Colonels Bight and Berry, and a Navy Captain.*** This honorable Court should vacate the Appeal Court's ruling and remand for further proceedings. In Larson the Appeal Court noted " The WPA prohibits the "tak[ing] or fail[ure] to take . . . a personnel action with respect to any employee . . ." **5 U.S.C. § 2302 (b)(8) (1994).** A performance appraisal is a personnel action under the WPA. **5 U.S.C. § 2302(a)(2)(A)(viii) (1994).** The reduction in his rating to "success" was an adverse action that would have a negative effect on his potential for advancement".

Defendants failure to take specific requested actions provides motive for retaliation. The Army points that credibility determinations are virtually unreviewable see **Hambsch, 796 F.2d at 436**; but the Appeal Court in Larson states: "Nevertheless, we may fully consider such determinations and assess the proper weight to assign to such determinations in light of the other evidence of record. See ***Grubka v. Dep't of Treasury, 858 F.2d 1570, 1574 (Fed. Cir. 1988); Wright v. U.S. Postal Serv., 183 F.3d 1328, 1334 (Fed. Cir. 1999)".*** The case in ***Hillen v. Dept of the Army, 35 M.S.P.R. 453 (1987)*** requires a judge to explicitly consider certain factors when making a credibility consideration, including the character and demeanor of the witness and any inconsistencies in testimony. Aside from problems with the Trial court's assessment of Boswell and witness testimony, the documentary evidence casts considerable doubt on assertions that they were not influenced by Boswell's protected disclosures. The DOD IG whistle blower investigations released in 1995 and 1998 and Board actions of 1993, 1997, and 2000 draw conclusions favorable to Boswell. The record contains no plausible explanation for the adverse personnel actions, aside from Boswell's allegations of retaliation.

Argument II. 42 U.S.C. 2000d-7 is a valid exercise of Congress's power under ***section 5 of the fourteenth amendment*** to remove Eleventh amendment immunity to suits under ***Title VI.*** In the government's intervening brief in ***Robinson v. United States of America to the United States Court of Appeal for the 10th Circuit Nos 00-3315 and 00-3332,*** the government argues that Section 2000d-7 can also be upheld as a valid exercise of Congress's power under Section 5 of the Fourteenth Amendment to abrogate States' Eleventh Amendment immunity. In ***Seminole Tribe of Florida* v. *Florida*, 517 U.S. 44 (1996)**, the Supreme Court articulated a two-part test to determine whether Congress has properly abrogated the States' Eleventh Amendment immunity. Congress has unequivocally expressed its intent to abrogate the immunity;

and second, Congress has acted pursuant to a valid exercise of power. When Congress enacted Section 2000d-7 in 1986, it expressly invoked its power under the Fourteenth Amendment. Congress unquestionably enacted ***42 U.S.C. § 2000d-7*** with the "intent" to invoke the Fourteenth Amendment's congressional enforcement power. Military service members render complaints. Where does the power come from to combat fraudulent concealment, to rectify the injury and to award damages? In upholding the abrogation in the ***Railroad Revitalization and Regulatory Reform Act as valid Section 5 legislation in*** **Union Pacific Railroad Co. *v.* Utah,** ***198 F.3d 1201, 1209 (10th Cir. 1999),*** 10th Circuit made clear that "congressional action may be upheld under § 5. Congress intended to use federal spending as the trigger for coverage under Title VI. That Congress is using the "carrot" of federal funds to assure non-discrimination does not remove these provisions from the ambit of Fourteenth Amendment legislation. Congress's power to enforce the Fourteenth Amendment, while not unlimited, is broad. ***City of Boerne*** **v.** ***Flores*****, 521 U.S. 507, 517 (1997).** Congress's power "to enforce" the Amendment "includes the authority **both to remedy and to deter violation of rights guaranteed** thereunder by prohibiting a somewhat broader swath of conduct, including that which is not itself forbidden by the Amendment's text." **Kimel *v.* Florida Bd. of Regents,** ***120 S. Ct. 631, 644 (2000)***. Therefore, the central inquiry is "Do Defendants including the Secretary of the Defense and the Secretary of the Army have authority and appropriate means **of deterring or remedying constitutional violations** and given the circumstances of this case was these authorities responsive?" Authorities over military service members have the authority, to design and prevent what in Boerne is described as unconstitutional behavior." *Id.* at 645 (quoting **City of Boerne,** ***521 U.S. at 532).*** Although "the line between measures that remedy or prevent unconstitutional actions and measures that make a substantive change in the governing law is not easy to

discern. Congress must have wide latitude in determining where it lies." ***Florida Prepaid Postsecondary Educ. Expense Bd.* v. *College Sav. Bank*, 527 U.S. 627, 629 (1999)**. "It is for Congress in the first instance to 'determin[e] whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment,' and its conclusions are entitled to much deference." ***City of Boerne*, 521 U.S. at 536.** So long as there is a "congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end," enforcement legislation is appropriate within the meaning of the Fourteenth Amendment. *Id.* at 520. Reasonable accommodations by any definition of the Equal Protection Clause does not include the activity appellant complained about in the Inspector General Report concerning the Defendant's treatment toward Afro -Americans Fant, Dunlap, Hobbs, and Brown. As matter of pretext the Investigation results came after termination of plaintiff and the ordering of plaintiff for Psychiatric Evaluation. Thus, investigation bias requires questioning as the Federal Circuit decided **Larson v USA 00-3041 Aug 14, 2001, page 7.** Appellants show punishment - a never ending ten year battle - lack of compliance ending in $ 500 total of consecutive sanctions (See last page in addendum 1 and 2 enbanc appeals. There is no question that States have engaged in a widespread pattern of unconstitutional race discrimination. The Supreme Court has recognized that the "history of racial discrimination in this country is undeniable." **McKleskey *v.* Kemp, *481 U.S. 279, 298 (1987).*** Thus, a statute like Title VI that prohibits race discrimination by States is quintessential legislation to enforce the Equal Protection Clause. See, *e.g.*, ***Ex parte Virginia*, 100 U.S. (10 Otto) 339 (1879) (upholding criminal statute prohibiting exclusion of blacks from juries as valid Section 5 legislation)** . By default, the Court of Appeals must have agreed with the Defendants that plaintiff failed to state a claim and that appellant failed to meet the four conditions required to revoke res judicata (appellees brief pages 6-9). The court

ruling is inconsistent with a previous ruling upholding Section 2000d-7's removal of Eleventh Amendment immunity for Title VI claims. See ***Lesage* v. *Texas*, 158 F.3d 213, 217 (5th Cir. 1998), rev'd and remanded on other grounds, 528 U.S. 18 (1999)**; see also ***Johnson* v. *University of Cincinnati*, 215 F.3d 561, 571 (6th Cir.) (upholding abrogation for race discrimination claim under Title VII of the Civil Rights Act), cert. denied, 121 S. Ct. 657 (2000)**; ***In re Employment Discrimination Litigation Against Alabama*, 198 F.3d 1305, 1321-1322 (11th Cir. 1999) (same)**. Considering the Navy Investigator's finding of retaliation (addendum 3 page 13), and plaintiff's testimony denying legal support, DD 5505.5 governs. TCU defendant admits to receipt of federal funds (addendum 3, pg 58). Texas agency do not deny that it is "receiving" the funds. This is all that the statute requires.

Argument III. 42 U.S.C. 2000d-7 validly removes eleventh amendment immunity to suits under Title VI. Section 2000d-7 of Title 42 provides that a "State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of ***Title VI of the Civil Rights Act of 1964***." The Supreme Court has characterized Section 2000d-7 as meeting its requirement that Congress unambiguously express in the text of the statute its intent to remove the Eleventh Amendment bar to private suits against States in federal court. **See *Lane* v. *Peña*, 518 U.S. 187, 198 (1996).** When defendants elected to accept federal funds, this removed Eleventh Amendment immunity from such claims pursuant to its authority under Section 5 of the Fourteenth Amendment. ***Section 2000d-7*** Is A Clear Statement That Accepting Federal Financial Assistance Would Constitute A Waiver To Private Suits Brought Under ***Title VI***. Congress recognized that the Supreme Court's decision in ***Atascadero State Hospital* v. *Scanlon*, 473 U.S. 234 (1985)** had implications for Title VI and ***Title IX of the Education Amendments***, each of which applied to those "program[s] or activit[ies] receiving

Federal financial assistance." See S. Rep. No. 388, 99th Cong., 2d Sess. 28 (1986); 131 Cong. Rec. 22,346 (1985) (Sen. Cranston); see also ***United States Dep't of Transp.* v. *Paralyzed Veterans of Am.*, 477 U.S. 597, 605 (1986).** Under Title VI and Title IX Congress enters into an arrangement in the nature of a contract with the recipients of the funds: the recipient's acceptance of the funds triggers coverage under the nondiscrimination provision. On signing the bill into law, President Reagan similarly explained that the Act "subjects States, as a condition of their receipt of Federal financial assistance, to suits for violation of Federal laws prohibiting discrimination on the basis of handicap, race, age, or sex to the same extent as any other public or **private entities**." ***22 Weekly Comp. Pres. Doc. 1421 (Oct. 27, 1986), reprinted in 1986 U.S.C.C.A.N. 3554.*** This suggest that a Private University as in the instant concerning defendant Board of Trustees, Texas Christian University that Section 2000d-7 thus puts States on notice that part of the "contract" for receiving federal funds is the requirement that each agency receiving funds consent to suit in federal court for alleged violations of Title VI. The entire package (nondiscrimination obligation and removal of Eleventh Amendment immunity) is conditioned on the agency accepting the federal financial assistance. The Fourth Circuit, after an extensive analysis of the text and structure of the Act, held in ***Litman* v. *George Mason University*, *186 F.3d 544, 554 (1999), cert. denied, 120 S. Ct. 1220 (2000),*** that "Congress succeeded in its effort to codify a clear, unambiguous, and unequivocal condition of waiver of Eleventh Amendment immunity in ***42 U.S.C. § 2000d-7(a)(1)***." Every court to address this issue has agreed with *Litman* that the Section 2000d-7 language clearly manifests an intent to condition receipt of federal financial assistance on consent to waive Eleventh Amendment immunity. See **Jim C. *v.* Arkansas Dep't of Educ.,** ***235 F.3d 1079, 1081-1082 (8th Cir. 2000) (en banc) (Section 504);*** **Stanley *v.* Litscher,** ***213 F.3d 340, 344 (7th Cir. 2000) (Section 504);*** **Pederson *v.***

Louisiana State Univ., *213 F.3d 858, 875-876 (5th Cir. 2000) (Title IX);* **Sandoval** *v.* **Hagan**, *197 F.3d 484, 493-494 (11th Cir. 1999) (Title VI), cert. granted* on other grounds, *121 S. Ct. 28 (2000) (No. 99-1908);* **Clark** *v.* **California**, *123 F.3d 1267, 1271 (9th Cir. 1997) (Section 504), cert. denied, 524 U.S. 937 (1998); see also* **Board of Educ.** *v.* **Kelly E.**, *207 F.3d 931, 935 (7th Cir.) (addressing same language in 20 U.S.C. 1403), cert. denied, 121 S. Ct. 70 (2000);* **Little Rock Sch. Dist.** *v.* **Mauney**, *183 F.3d 816, 831-832 (8th Cir. 1999) (same).* *Congress Has Authority To Condition The Receipt Of Federal Financial Assistance On The State Waiving Its Eleventh Amendment Immunity* Section 2000d-7 is a valid exercise of Congress's power under the ***Spending Clause, Art. I, § 8, Cl. 1,*** to prescribe conditions for States which voluntarily accept federal financial assistance. As the Supreme Court recently reaffirmed, when it elects to disburse federal funds, "Congress may, in the exercise of its spending power, condition its grant of funds to the States upon their taking certain actions that Congress could not require them to take, and acceptance of the funds entails an agreement to the actions." ***College Sav. Bank*** **v.** ***Florida Prepaid Postsecondary Educ. Expense Bd.*****, 527 U.S. 666, 686 (1999).** Defendants Texas Christian University and the Texas National Guard agency ultimately was free to reject both the conditions and the funding, no matter how hard that choice may be. In ***Alden*** **v.** ***Maine*****, 527 U.S. 706, 755 (1999),** the Court specifically noted that "the Federal Government [does not] lack the authority or means to seek the States' voluntary consent to private suits. Cf. ***South Dakota*** **v.** ***Dole*****, 483 U.S. 203 (1987)."** Similarly, in ***College Savings Bank***, the Court reaffirmed the holding of ***Petty*** **v.** ***Tennessee-Missouri Bridge Commission*****, 359 U.S. 275 (1959),** where the Court held that Congress could condition the exercise of one of its Article I powers (the approval of interstate compacts) on the States' agreement to waive their Eleventh Amendment immunity from suit. 527 U.S. at 686. Congress also has

delegated power under the Commerce Clause to regulate "otherwise lawful activity". Then the central issue is based on the appellants accounts of retaliation, why weren't the government and state employees punished? Defendants' attempts to distinguish this case as one which has already been tried is not persuasive. Appellants were not made aware that the black employee and witness to the investigation was missing until LTC Bright drew the criminal connection (see addendum 3, pg 11-12). After review of the Hayhurst addendum 3, page 21-24, it provides reason for either a hate or terrorist violation. State law "authorize[s] and empower[s]" the Board of Education to apply for federal funds and "to do all things necessary to comply with and carry out any such federal law or the rules and regulations promulgated thereunder by the federal government or any agency thereof." This certainly does not mean intimidation to the potentially most damaging witness. The statutes themselves, "state educational institutions to contract with the United States Department of Education to apply for and receive federal funds and to make the funds available under existing [federal] law, rules, or regulations" on their face make clear that agencies receiving federal financial assistance are prohibited from discriminating. See ***School Bd. of Nassau County* v. *Arline*, 480 U.S. 273, 286 n.15 (1987)**. Appellants supplied the agreement signed between Texas Christian University and the Department of the Army. (addendum 3, pages 2-8) The statutes do not force States to administer federal programs - they simply impose conditions on those state agencies that accept federal financial assistance. This case sought administrative remedy and as late as the agency final agency action, December 2000, the agency was unable to recognize fault in the assessment by partisan officials. Rather than to admit error, the government has lodged a fraudulent concealment campaign and adopted a legal strategy which attempts to negate the premise that there is no federal statute of limitations for civil rights actions brought pursuant to section 1983.

Argument IV. A court abuses discretion when new evidence of compelling nature warrants a new trial, leave to supplement the record, and justification to vacate trial court summary and final judgment. This argument is adopted and articulated at addendum 1, pg 10 - 11. The ABCMR 1997 ruling makes no mention to a hate crime, the disappearance of a witness in the Army's proceedings. Secretary of the Army Defendant cites the BCMR action as "permissive". But when program fraud and Rico assertions rise to the level effecting the Agency impartiality, Court precedence is remand or reversal. Sovereign immunity does not preclude an independent action of contract violation for fraud upon the court and for violation of regulatory policy. DoD 5505.5 requires investigation. Defendants violated ***DOD Directive number 5505., 5 Subject the implementation of the fraud program Civil Remedies Act of 1986, October 1986, Title V, U.S.C. code chapters 33, 43,51, 53, Subchapter III, Title 31 U.S.C. 3716, 3729, 3730, 3803, 3804, 3805, 3806, 3808, and Title 18 U.S.C. section 287 Federal Rules of Criminal Procedure, rule 6(e)***. The applicability of DD 5505.5 para 2 is "to the Military departments, to DOD components, to the IG". It is a DoD Policy to redress fraud. Para 4.3 states the Secretaries of the Military Departments shall establish procedures for caring out duties and responsibilities as authority head and 4.3.3 delegate duties as appropriate.

Argument V. The doctrine of administrative remedy offsets the doctrine of Res Judicata when the Army Claims Agency and EEOC subsequently grants consent by letter to suit and final agency action is deemed finalized. This ruling directs involuntary retirement - an action not heard by any court. The District Court and 5th Circuit overlooked controlling principle of law concerning "just compensation" for damages pertaining to retaliatory, whistle blower, constitution violations of the First, Forth, Fifth, Sixth, and Thirteenth, Fourteenth and equal protection amendment. The *doctrine of foreseeability* should have alerted defendant to economical and emotional injuries. 18 U.S.C. cites that to launder money is prohibited by 371 and 18 U.S.C. 1956 (a) (1). The Agency must proceed impartially and investigate injury caused by wrongful discharge and a fifth amendment taking recoupment of civil service pay ($ 34,521), loss of civil service salary and position) and breech of contract claims. The Texas Guard must consider 42 U.S.C. § 1981 and title VII, 42 U.S.C. § 2000e violations under the framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). The Agency has not articulated a legitimate, non-discriminatory reason for the wrongful discharge. The record establishes pretext. In compliance with Fed R. Civ.

P. 56(c) and Rule 56(e) appellants go beyond the pleadings to show there is a genuine issue for trial." *Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). Shackelford v. Deloitte & Touche, LLP, 190 F.3d 398, 404 (5th Cir. 1999).* Major Daniel's affidavit obtained through investigation is direct evidence of the senior leadership's intent: "I hope this puts a lid on it finally: He (Boswell) needs to be put out of the system". (CR page 233) In Reeves, *530 U.S. at 143-46;* Russell, *235 F.3d at 229 & n.19,* the Supreme Court faulted the decision in *Reeves* for failing to accord proper weight to the plaintiff's substantial evidence of pretext. Reeves, *530 U.S. at 149*. Comments relate to the protected class is proximate in time to the termination 5 February 1999 and was made by an individual with authority over the employment decision at issue; and relates to the employment decision at issue.'" *Krystek v. Univ. of S. Miss., 164 F.3d 251, 256 (5th Cir. 1999) (quoting Brown, 82 F.3d at 655).* This argument is adopted and articulated on addendum 2 page 8- 14.

Argument VI. Military service members are entitled to exceptions to Feres Doctrine when the doctrine fundamentally conflicts with the statutes as example Title VI civil rights statutes and injury from protected Disclosures under the WPA. This argument is adopted and articulated at addendum 2, page 11-12. **Does *Feres* preclude WPA and Discrimination claims?** Is this a case where application of the Feres Doctrine is fundamentally unfair? *Feres* warrants assessment because of its harm to society. Plaintiff experienced an entrenched dysfunctional management system. On 19 June 2001, an Internet cite contains 1127 members, mostly warn down Veterans, who signed a petition expressing sentiments and injury about *Feres.* To the average juryman and tax payer, these injustices zoom straight for the heart. Its bothersome to compensate for miserable defects in troubled agencies and University programs protected by systemic flaws - in investigations and BCMR administrative proceedings and takings whether it be an "arm" or "house". The Feres doctrine prohibits accountability. Courts cite incident to service and *Feres.* Complainants lack remedy in state court because state defendants are shielded by immunity and also *Feres.* The Court Denies motions for Discovery and to supplement the record with additional findings of the ABCMR Army Regulation 15-185 ABCMR states the ABCMR is not an investigating body that it begins each case with the presumption of regularity. Once a petitioner challenges the regularity with affidavits and DOD reports and records, the Agency must resolve disputed facts and issues of fact and policy *Essenberg, 988 S.W. 2d at 189.* Review of the most recent case ABCMR case AR20000045750 25 July 2000 shows injustice when the Government's word takes precedent over

individual affidavits. Failure to fact find prejudices remedy and provides even greater justification for discovery. Failure to acquire advisory opinions from the National Guard Bureau as was accomplished in the DIAZ case AC9505686 published 19 February 1997 is error. Acting Director Karl Schneider directed complainant Diaz be promoted by two grades. In May of 1997 Mr. Schneider denied Boswell's promotion against the recommendation of a three star Army General and a Department of Army Inspector General Lieutenant Colonel. Petitioner complains of disparate and bias treatment. DOD Inspector General recommended both Diaz and Boswell for relief. The evidence in both proceedings show violation of law. A Texas Guard technician complainant has no remedy with the MSPB and OSC only through the BCMR or through federal courts. Failure of the court to supplement the record requires the filing of a second, additional action. Senator Sam Nunn states "Mr. Boswell's case merits careful review in light of the strong public policy against whistle blower retaliation" page 158 in the court record. This would appear counter to the proponents of the Feres doctrine. Discovery is relevant to a determination concerning whether the defendant had engaged in discrimination. The Court in *Duke* reasoned that failure to allow discovery into the records of professors university-wide to substantiate a gender-discrimination claim constituted an abuse of discretion. As with *Rubinstein,* Boswell's title at the University was Associate Professor. Boswell reflects several genuine issues of material fact. *Fed. R. Civ. P. 56(c).* Boswell makes the required showing. *McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-04 (1973).* Boswell was a member of a protected class; According to three Army General officers, he was qualified for the benefit or promotion he sought; was denied these benefits and such denial constitutes an adverse employment decision; and that the adverse employment decision and correction was differentially applied to plaintiff. *Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981); Ward v. Bechtel Corp., 102 F.3d 199, 202 (5th Cir. 1997).* The court is aware of the Supreme Court's recent admonition that plaintiffs need not always present evidence above and beyond their prima facie case and pretext, *Reeves v. Sanderson Plumbing Products, Inc., 2000 WL 743663, 5. Brown v. CSC Logic, Inc., 82 F.3d 651, 655 (5th Cir. 1996),* Whistle blower reprisal was proximate in time to the complained-of adverse employment decision and the proximate failure to receive raises or promotions. The inferences point so strongly and overwhelmingly in favor of appellants that reasonable men could not arrive at a contrary verdict. Judgment as a matter of law is proper and should be granted. Appellants do not have to prove that his "protected conduct

was the sole factor in motivating. *Long, 88 F.3d at 305.* Discrimination was a second factor. The employer engaged in illegal discrimination or retaliation (*Hicks, 509 U.S. at 511).* As substantiated by the Bright, Fant, Bice, Lynn, Kinser, HayHurst, Mroski, and Payne affidavits. Even without discovery, by a preponderance of the evidence, appellants establish that filing the grievance was a motivating factor in the TCU, Army, and Texas National Guard decisions. Had plaintiff supported his supervisors in the appearance of unethical and illegal contract operations, plaintiff, like peers, may have secured a successful military career. In deposition, taken pursuant to the Army's dismissal action, Colonel Parnell from the Office of the Chief of Staff of the Army, stated clearly the lack of General Officer accountability. The evidence of retaliation could be no more direct. Appellants respectfully challenge the courts denial of interrogatories, admissions and for production of materials. But for retaliation, the adverse employment action would not have occurred. *Long v. Eastfield College, 88 F.3d 300, 305 n.4 (5th Cir. 1996). McDaniel v. Temple Indep. Sch. Dist., 770 F.2d 1340, 1346 (5th Cir.1985). 42 U.S.C. §2000e-2(m) (Section 107).* Plaintiffs show motive. In the wake of *Price Waterhouse v. Hopkins, 490 U.S. 228 (1989),* plaintiffs must prove that but for the discriminatory intent, the adverse employment decision would not have been made. Discovery allows examination of good faith and impartiality. Discovery is the tool to ascertain whether the court's response to questions is in the affirmative: "Do you find by a **preponderance of the evidence** the following: that the ABCMR acted with malice or with reckless indifference to federally protected rights of James Boswell? That James Boswell's filing of a breach of contract and taking complaint to an investigative authority was a motivating factor in the Army and University's decision to remove applicant from ROTC duty in 1986? That Boswell's filing of a complaint was a motivating factor in the Army's decision: to remove applicant from the Army in 1989? to deny reinstatement with seniority in 1997? to deny reinstatement with seniority in 2000? To deny civil service reinstatement to an equitable grade of GS -7. The evidence supports a finding that the malfeasing agent served in a "managerial capacity" and committed the wrong while "acting in the scope of employment." *Kolstad, 119 S.Ct. at 2127.* The employer's good faith efforts in compliance with their internal policy is absent this case. Whether the conspiracy to rid Boswell from duty rose to the ABCMR executive level is an issue in dispute. *(Deffenbaugh-Williams v. Wal-Mart Stores, Inc., 188 F.3d 278 5th Cir. 1999).* The DOD Whistle blower Inspector General was well within its purview in 1995 to so find, that "Mr. Boswell's whistle blower actions are not in

dispute" and to recommend action through the ABCMR. Had the ABCMR honored the Texas Veterans Commission and General Officer statement requesting direct promotion to a higher grade, this case would be resolved. Now this court must contend with setting precedent and consider means for equitable compensation in lost wages, punitive, special and liquidated damages. In *Rubinstein*, he was entitled to an award of punitive and emotional damages. Under three factors, the degree of reprehensibility of the defendants' conduct demonstrates ill-will. *Deffenbaugh-Williams, 156 F.3d at 597*. The DOD contractor expressly acknowledges an undertaking of contract mismanagement. The wrongful discharge demonstrates a high degree of reprehensibility. ABCMR reasonableness and disparity enters the constitutional calculus. The back pay is prospective relief to correct a wrong previously committed, while special damages and promotion with seniority is properly the tool used to correct the retrospective harm. Given the illegal conduct by the conspirators, retaliators, and malicious or reckless indifference to Boswell's federal and state constitutional rights, the ABCMR compensation is short of Due Process. Reinstatement to a position at TCU is appropriate due to testimony concerning the emotional state resulting from the unreasonable behavior. Defendant's unlawful influence, lack of formal hearing, denial to interview key witnesses represent systemic flaws to impartial adjudication. The domino effect is on trust, readiness, recruiting, retention. Defendants insulated themselves and the ultimate decision maker's action is merely a "rubber stamp" for the subordinate's recommendation. *Russell v. McKinney Hosp. Venture*, 235 F.3d 219, 226-27 (5th Cir. 2001). The employee demonstrates that others had influence or leverage over the official decision maker by imputing discriminatory attitudes to the formal decision maker." *Id.* at 226; Willis v. Marion County Auditor's Office, *118 F.3d 542, 547 (7th Cir. 1997)* Under the circumstances of the case, the ABCMR acted as the 'cat's paw' for Army Generals and the Secretary of the Army accused of wrong doing. This case must fall under the "rubber stamp" exception. Plaintiff's suit certainly disadvantaged plaintiff.

Argument VII. Whether the court abused discretion for dismissal on grounds of lack of jurisdiction and grounds that the claim is time barred. The Claims court violates legal precedent that when a party fails to disclose evidence and obstructs justice and is a participant to fraud, statute of limitation and affirmative defenses are tolled/waived. From the settlement date 28 August 2000, the six year statute of limitations still runs. From the financial disputes arising from federal wrongful termination 12 April 1989 and 5 February 1999, statutes are tolled. The Claims

Court ordered restoration to military office, *(Skinner, Sanders, Yee v. United States, 512 F.2d 1383, 206 Ct. Cl. 388 (1975); Murphy v. United States, 16 Cl. Ct. 385 (1989))*, placement in correct retirement status, *(Gant v. United States, 18 Cl. Ct. 442 (1989); Casey)* and correction of military records, *(Skinner, Sanders, Yee, Burd, Gant, Murphy, Casey).* The Agency after receiving Senators Grams concern and endorsement of the Bright statement had knowledge of the conspiracy to harm the Boswell plaintiffs which would allow a prudent person to charge another with dishonesty. *USA v Fed INS NO 99- 35881 (9th Cir Aug 7, 2001)* Looking at other circuits, dismissal on grounds for statute of limitations is inconsistent with *Asher Rubinstein versus Administrators of the Tulane Educational Fund 5th Cir 98-30777, July 6, 2000.* Professor Rubinstein asserted retaliatory claims and the trial court dismissed this suit on statute of limitations. On appeal, Rubenstein was awarded compensatory and punitive damages, and a raise as an equitable remedy for the retaliatory act taken by Tulane. Statute of Limitation ruling conflicts with the Doctrine of Administrative Remedy and the U.S. 9th Circuit Court of Appeals, *Couveau v American Airlines 9955032, CV-97-06731-JSL, July 17, 2000.* The Colonels' citation for unlawful refusal of legal assistance hindered an adequate defense as well as the government constraint of ten years worth of back pay. The FLRB found Agency retaliation.[3] Yet, witnesses still feared retaliation disadvantaging plaintiff. Withholding of discovery had the effect of concealing fraud and explanation for unreasonable search and seizure of evidence. U.S. defendants urged administrative exhaustion. See footnote 1. Appellant complied. Expunge of all records related to discharge confirms use of remedy. It tolls. The economic harm was not realized until the government rendered settlement, 28 August 2000. The pro se litigants may have not have presented the claim to attorney standards, but claims were submitted sufficiently for the Court to grant relief. Petitioner in the 2000 ABCMR action plead fraud and conspiracy. Significant facts, absent from the ABCMR decision in May 1997, came after this suit was filed. Framing of the complaint is crucial[4]. The final Army settlement, 6 December 2000 serves as notice of constructive discharge and notice of additional prejudice concerning a performance evaluation rendered on April 12 1989.

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[3] The FLRB required Defendant Army General, Major General Daniel James to place notice on public bulletin boards. The notice implied that victim of retaliation could raise a claim.

[4] Although a plaintiff may seek leave to file a supplemental pleading to assert a new claim based on actionable conduct which the defendant engaged in after a lawsuit is commenced, see Fed. R.

ABCMR ruling 2000 addresses additional claims[5]. LTC Bright's confession statement provided the argument for formal barriers and interference with the family and violation of specific statutes[6]. Abuse of discretion is shown by examining the four factors in *Griggs.* [7] Defendants failed "to offer a plausible explanation to the several material facts in dispute". This has caused a substantial delay and expense to appellants. Fraudulent actions can now be easily reconstructed. Constitutional issues are fairly joined. This court has experience for resolve - particularly when facts and affidavits reflect intentional discrimination. As a matter of law, appellants suffered due to regulatory reasons. This raises a fact issue which must be sent to a jury. *Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S.Ct 2548, 2552 (1986).* The Appeals Court failed to place particular reliance on the testimony and misevaluated the evidence for causation.

Argument VIII. Whether the court ruled properly on whether appellants have stated a claim for which relief could be granted is questioned. It is a dispute over lawful state award of damages, over employability, civil service back pay and transfer to another civil service position in lieu of civil service termination. But the case is different than as in *Roberson v. Principi Fed Cir May 29 2001.* Agency failure and role in conspiracy over Whistle Blower Claims is at issue. The Federal Court has said that federal whistle blowers are not entitled to non pecuniary damages winning claims against them for their disclosures *(Bohic v. Department of Agricult* *25 April 2000 Fed Court of Appeals).* A year later the circuit found that whistle blower p*tections do not apply to "dual status" technicians those who must main membership in a National Guard to keep their Federal positions *(Singleton v. Merit Systems Protection Board 25 Apr 2001).* The American Federation of Government Employees and the National Treasury Employees Union testified as to the support of house Representative Bill 169 but rejects methodology for payments for retaliation out of the same budge pot for the inherent agency pressure to obstruct justice, and resist payment. Yet the head of the Office of Special Counsel, Elaine Kaplan, testifying on proposed Senate

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Civ. P. 15(c), he is not required to do so, *see First Jersey Sec., 101 F.3d at 1464; see also Manning, 953 F.2d at 1360*.

[5] In the first ABCMR action, it is unfair to preclude plaintiff from a second action in which he was disabled from presenting in the first.'") (*Restatement (2nd) of Judgments § 26(1)(c) cmt. c (1982)).*

[6] Appellants have sufficient contacts to satisfy the Due Process Clause of the Fourteenth Amendment. *Chaiken v. VV Publ'g Corp., No. 95-9301, 1997 WL 403511, 2d Cir. July 21, 1997.*

[7] Whether leave to amend is appropriate, the court considers "presence of any of four factors: bad faith, undue delay, prejudice to the opposing party, and/or futility." *Griggs, 170 F.3d at 880.*

legislation S-995 that protections for federal employees who blow the whistle on fraud and abuse are being whittled away by erroneous interpretations of law. The District Court misapplied law and the evidence concerning plaintiffs financial dispute. *(Callahan v. United States 00-538 C).* Plaintiffs prove that the government has concealed its actions yet the nature of the conspiracy was inherently knowable at the time the injury occurred. District Court assertion that plaintiff has not developed the complaint is incorrect. Failing to oversee the remedy responsibility over retaliation claims is abuse of discretion in light of two separate Whistle Blower Investigator opinions of retaliation; Secretarial Authority ruling (removal was "arbitrary" and discharge is declared void and to no effect); cause and injury; intervening events; admission to the conspiracy; sworn affidavits implicating and pointing to a DOD contractor. While the Federal Circuit has experience with these claims with other Boards *Mintzmeyer v Department of Interior 95- 3665 May 16 1996 and the* Claims Court has authority to ensure the ABCMR exercises partiality, neither has jurisdiction over Title VI, Title VII, Title IX and retaliation claims. The Final agency ruling appears to give little weight to the Director of Department of the Office of Army Equal Opportunity. Direct promotion was a remedy for retaliation for engaging in activities protected by Whistle Blower Law and Title VII. Failure of each defendant to influence this remedy, favorably, is viewed as additional reprisal. The employee opposition of contract practice overlaps with violation of other statutes - 42 U.S.C. § 2000e-3(a). Petitioner adduces sufficient evidence that would permit a reasonable trier of fact to find that the proffered reason is a pretext for retaliation and demonstrated that the adverse employment action would not have occurred "but for" the protected activity. Appeal Court afford a high degree of deference to employers in their hiring and promotion decisions. In order to be probative on the issue of retaliation, "the qualifications [must be] so widely **disparate** that no reasonable employer would have made the same decision. General officers are alleged to have played a role in the violation of 18 U.S.C., 42 U.S.C. and Title VI, Title VII, Title IX violations, the Racketeer Influenced and Corrupt Organizations Act, and Texas Title II and the Texas Whistle Blower Act. Major General Daniel James was cited. Army Inspector General, General Hale was convicted. It was unlawful for any person employed by or associated with any enterprise to conduct or participate in the conduct of such enterprises affairs through a pattern of unlawful activity, 18 U.S.C. 1961 et seq., 1962(c*). Cedric Kusedric Kushiner Promotions LTD. v. King No. 00549 2nd Cir April 18, 2001*, reversed and remanded by *the US Supreme court June 11, 2001 Pp.28.219 F.3d*

115 holding that a corporate employee conducts affairs within the scope, or beyond the scope of corporate authority through its directors, officers, and agents. Plaintiff explains the three phase conspiracy and the existence of separate entities. Based on Congressional leader intervention on two accounts, Senator Sam Nunn in 1996 and Senator Phil Gramm in March of 1999, the Secretary of the Army was factually aware of illegal operations, cover up, and reprisal. The ABCMR violated Congressional Intent by: 1) not reaching a position that appellant should be made whole again i.e. promotion with seniority 2) not recommending equitable, punitive or special damages and in the absence - correct the injustice 3) failure to levy accountability on the perpetrators construed to violate Rico 1962(c)s and 1961(3). (4) The District Court abused its discretion by failing to apply similarly pretexts to the instant case as other circuits applied. (*United States v. Bestfoods, 524 U.S. 51, 6162).* The ABCMR has failed to protect a legitimate enterprise and immunized upper management and lower rung participants from liability. This has allowed unlawful acts to victimize the agency. *United States v. Turkette, 452 U.S. 576, 591.* The Court must challenged this forbidden pattern as is accomplished in other circuits. *Brannon v. Boatmens First Nat. Bank of Okla., 153 F.3d 1144, 1148, n. 4 (CA10 1998); Richmond v. Nationwide Cassel L. P., 52 F.3d 640, 647 (CA7 1995); Jaguar Cars, Inc. v. Royal Oaks Motor Car Co., 46 F.3d 258, 265, 269 (CA3 1995); Sever v. Alaska Pulp Corp., 978 F.2d 1529, 1534 (CA9 1992).* RICO seeks to prevent victimization using a corporation for criminal purposes e.g. protecting officials responsible for program fraud. *National Organization for Women, Inc. v. Scheidler, 510 U.S. 249, 259 (1994). Reves v. Ernst & Young, 507 U.S. 170, 185 (1993).* Had the Court reacted properly on the plaintiff's violation of the False Claims Act ("FCA") as was accomplished in *Riley v St. Lukes Episcopla Hospital No. 97-20948, 5th cir, May 25, 2001* conspiracy to defraud the United States Treasury in violation of the statute may have come to light. In Riley, Nurse Riley sued eight defendants. More than a billion dollars have been recovered under the FCA since 1987. *Anna Mae Walsh Burke, Qui Tam: Blowing the Whistle for Uncle Sam, 21 Nova L. Rev. 869, 871 (1997).* Justice Scalia found relators filing suit under the FCA have Article III standing. *Stevens, 529 U.S. at 848.* The Take Care Clause states that the Executive "shall take Care that the Laws be faithfully executed." *U.S. Const. art. II, § 3*. It gives the Executive the power to enforce the laws, *Springer v. Philippine Islands, 277 U.S. 189, 202 (1928);* such power includes the authority "to investigate and litigate offenses against the United States." But *Feres* protects the government from litigation: The relator, in Boswell, plead fraud with

particularity in accordance with FRCP Rule 9(b). *Vermont Agency of Natural Res. v. United States ex rel. Stevens, 529 U.S. 765, 848, 120 S. Ct. 1858, 146 L. Ed. 2d 836 (2000). Russell, 193 F.3d at 306.* When trust, integrity, and respect for honor, duty, and country is high, patriotism is high. When the government partakes in corruption, reprisal and retaliation, resources will be high to compensate for the inequities and fall out. Defendant inadequacy to address these relator issues is a factual and genuine issue in dispute. While a dissenting judge may cite that Possees may have been appropriate in the Wild West, where they were deputized by the an executive officer--the Sheriff--Congress has no business forming them now, the DOD employee oath requires all employees help agencies achieve control. The DOJ data indicates that in the first nine months of 2000, the government recovered $1.2 billion in cases in which it had intervened and $913,957 in those in which it had not. The agency fails to support Article II of the Constitution. Plaintiff has standing. The Court misinterpreted vicarious liability and congressional intent to make plaintiffs whole again. The typical government civil service position and military promotion criteria considers scores from the applicant's past performance review, awards received, and potential for success. By failing to provide complainant an annual rating from 1998 thru 1999, defendant successfully disabled appellant's from future employability in civil service.

Argument IX. Whether the court recognized a conflict of interest is crucial. In the highly publicized case summer 2000 Supreme Court justices recused themselves. The adjudicator whether it be judicial or military tribune must meet test of impartiality. The public's confidence in Agency actions coincides with the level of citizen cooperation necessary to the success of any investigation. The average citizen wants an effective Agency and they want to help - and correct incompetence and abuse. So, with that in mind, the court must applaud the 100 American citizens for their cooperation and confidence and coming to the aid of plaintiff. But the Agency has failed to take the recommendations. But it is the agency at-large that determine its' success and this can be achieved only by a positive dynamic between the 'rank and file' and management. When Agency conspiracy is alleged, the upper-tiers of management have interest especially when the Agency is faulted for wrong doing and any penalty is taken from the budget. Here lies a conflict of interest. Notice the time delay and conduct of investigations. History is mankind's best teacher. The Agency's problems center around four distinct elements: Discipline, Responsibility, Accountability, and Assessment. Foot note 9 reveals the DOD magnitude. One case after another has surfaced to

illustrate this internal weakness, and the consequences cannot be understated. It now takes inordinate amounts of time to resolve even the smallest mistakes or corruption. Discipline is anything but swift and sure. Promotion of Army Colonel James Bisson to Brigadier General in the Texas Guard undermine discipline considering the Navy Captain (Roy Miller) finding at CR pg 13: "The matter of retaliation against SGT Boswell should be referred to the CG, 49 AD for disciplinary action". Instead this General improperly influenced the discharge action. Sluggish management disadvantages the BCMR applicant and corrodes the process. The BCMR's must not be allowed to dodge this vital responsibility. If management mis-performs and chooses not to properly discipline, the accountability factor is side swept. Confidence in upper authority is dramatically lost. Instead of enjoying a high morale and positive espre de corps, those in the system cling to the incompetent, the dishonest, and the corrupt. Corruption, while small, inevitably leads to larger corruption. There needs to be an objective assessment made on a regular basis. The Supreme Court is equipped to carry this maintenance tasks. This case has shown the reality that when military service members expose contract discrimination and troubled waters, the member may expect that upper management, protected by *Feres*, will manipulate the system to damage to others to secure their careers. Previous warriors Senator Sam Nunn CR 158, Three Army Generals (CR 419, 420, 421) including Lieutenant General Robert Wetzel CR 492, and Colonel Parnell (CR 492) tried intervention. If the Court were to attack the Military Department's complacency and arrogance, this increase integrity will assuredly produce reason to turn the tide as reported by the Washington Times May 31, 2001, "Army failed to meet (recruiting) expectations in March, April, and May, 2001". This issues are best reviewed by examining the Supreme Court's *West Department of Veteran Affairs v Gibson 14 June 1999 N0 98-238* concluding that *42 U.S.C. & section 2000e 16 (c)* empowers court to entertain an action by a complaint still aggrieved after final action and the Texas Appeals Court's decision in *Texas Dept. Of Human Resources v. Green No 3-92-059-CV (Tex. App.Austin 1993, n.w.h)*[8] and *Breax v City of Garland v.205 F.3d 5th Cir 2000* (exhausting administrative remedy). There is without doubt constitutional injury and reason for

[8]*The Whistleblower Act seeks to protect the individual employee against the collective acts of the agency, the bureaucracy, the institution, the system that retaliates, and does not seek to protect the employee solely against the acts of an individual supervisor. The act unambiguously waves the governmental immunity from suit and from liability of governmental suits seeking redress for*

trial. *Jackson v Van Winkle, 660 S.W. 2d 807, 809* Appeal measures are necessitated to protect[9] service members from abuse. A departure is necessary from the usual practices[10] which has placed this Nation in quandary. Whistle blowers loose. Application of the status quo is unappealing. Maintaining judicial uniformity leaves a bad taste because of the impact of inherent unfairness, injustices and obsolete doctrine. Even the courts are reluctant to change. Misconduct and claims of fraud are not suppose to be barred from suit by any principles including *Feres* and R*es Judicata.* Conspiracy is an exceptional and important issue not only from Senator Nunn's whistle blower perspective (16 September 1996), but from the perspective of due process, breech of contract, and governmental regulatory interference. The Appeals Court's decision is inconsistent with its own rulings in *Pederson*, with *Bond* and other circuits.[11] The district court is expected to hear the claims, not abandon them. Officials may not take students earned money. Officials may not kill the contract violation messenger and still reap secure employment and annually, $ 6,000,000 in Title IX funds. Outrageous conduct included arbitrary cadet disenrollment; silence; law firm threat; lack of due process; psychiatric evaluation; reputation damage; and termination. This rises to the level for Court consideration of Agency and contractor impartiality. Gratitude goes to the Marine (court record page 157, addendum 3, pages 13-14), deposition of an Army Colonel Chief of Staff (489-

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retaliation. Texas Dept. of Human Services v. Green, NO. 3-92-059-CV, (Tex. App.—Austin, 1993, n.w.h.), at pg. 8 of the opinion.

[9] An antidote to denial is confession. Admitting guilt will go along way to recruitment, retention, and readiness. Consider financial costs for the shortcomings - the bite to the tax payer wallet, advertisement and incentives to compensate for "Americans" cynicism and question of BCMR practice of fairness, equity, and justice. Why are we spinning our wheels and losing productivity? Just as there is a correlation between child hood and outcome, there appears to be nexus in cause and effect between damage to a military person and EX-military damage to society e.g. whether homeless or a hardened criminal. While peace is the antidote to retaliation, ABCMR commitment is required to improving Armed Services accountability.

[10] DOD IG web site, http://www.dodig.osd.mil/audit/reports/index.html results of the audits from the IG to Congress: Whistle Blower statistics April thru Sep 2000 (the latest publish report) DOD IG auditors realized $ 201 million in monetory benefits 191 indictments 152 convictions; 253 ongoing investigations senior official misconduct; 20 cases were closed concerning allegations of improper referrals for mental health; 297 cases of military whistle blower reprisal.

[11] *Pederson v. Louisana Stat Univ. 201F. 3d 388, 406 (5th cir. 2000); Coveau v. American Airlines 9955032, CV-97-06731-JSL, July 17,2000* and the continuing violation doctrine and title VII protection against retaliatory discrimination as described in *Felder D.C UAL Corporation 9th cir appeal 98-3551 and Supreme Court decisons in Bulington Industries v Ellerth 118S.Ct 2257 (1998) and Faragher v. City of Boca Raton, 118 S.Ct. 2275 (1998).*

497)[12], the female cadet victim (page 192-3, addendum 3, pages 33-34), the Union President (229), the Court reporter (page 302), a POW (505), Chaplains, Pastors, School Administrators, a County Judge, Senator Gram. Each affidavit contributes - negates the District Court ruling - begs to make America better. For the accountant, the pay off check to TCU (court record page 159) may be more persuasive. What methodology protects an impressionable recruit or cadet - certainly not resistance to change and failure to acknowledge impropriety in the work place? This case gained force because of the goodness in people. If the victimization of the African Americans and females in this case is allowed to stand without judicial accountability, a responsibility is attached - our American heritage and history. Escaping retaliation consequences is sufficient to award judgment as matter of law. The leadership of the Army, the recruit, the cadet, our future leaders need this court's input to show a caring interest in the affairs of all service members similarly to all citizens.

REASONS FOR ALLOWANCE FOR WRIT

SUMMARY AND CONCLUSION

Our nation has just witnessed that our firemen, police and military force are precious commodities. We must proper and work toward readiness, recruiting, and retention. When service members witness dilution, inconsistency, corruption the first thought is escape from being a victim, fear, disappointment, and frustration. The result is that many of them move on. We have taken the role of the National Police Force to confront all terrorism. A twelve year old in America knows no difference when she is so frightened, escorted by two men in Military uniform, placed into a military car not knowing where she will be taken. Take less than a minute and read her statement

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[12] They had a sizable pot of money, and now this cadet fund was used to pay air fare and other expenses . . . Come on! So when I read that, that caused me to read a lot deeper. I think it was a bunch of crap. I think it was put together in a way that would maintain the image of every thing being in accordance with absolutely simon-pure propriety at the University". Army Chief of Staff

(appendix, addendum 3, page 31 and 32). Senator Sam Nunn's statement affirms the appropriate rationale why the Supreme Court intervention in this case is necessary: As the Senator states:

"in light of the strong public policy against whistle blower retaliation".

Equally spoken by words of wisdom from an American Hero, Mr. Tom Lancaster, he writes as if it is a story:

> **On a deer hunt ... unprepared ... lost in high mountains ... rugged canyon I will always remember Jim Boswell. I appreciate his courage and ability to help us survive and give credit to the Army, airborne, ... Ranger training. Jim needs help. I respectfully request that you and the readers of this affidavit do whatever is in your influence and authority to correct this injustice. We need members with strong values and convictions, like Jim, in our services ...** (CR page 505).

Why the writ? My first thought is for Veterans, like my dad in the nursing home who served in WW II and the Korean War. Then I would say for my daughters. They were terribly wronged. Then the seven cadets and cadre who were deprived of a career. But most of all for Staff Sergeant Dunlap, an afro American and his family. As appellant may have been instrumental in saving the life of Mr. Lancaster, SSG Dunlap testified for plaintiff. For some mystically unknown and unexplained reason, he shortly after testifying disappeared and supposedly abandon his family and country after he had served eighteen years, two years short of retirement. The four who knew him Bright, Fant, Lynn, HayHurst, Bice each provide affidavits (Appendix addendum 3). We allege there is more than meets the eye. No body remembers Dunlap and or his family. Appellant served in five Army Divisions, traveled immensely, and attended five Universities in Texas. Since 1998 appellant has studied legal cases on each of the Circuit's web sites. It appears as it applies from a legal perspective and Title VI, the courts in Texas require emphasis and catch up with the rest of the nation. As a matter of law, plaintiffs pled their case. Appellants suffered. Modeled from federal statutes,

Texas Education Code, Sec 61.001 purpose is to provide leadership and coordination for institutions and governing boards - be an advocate ... of sufficient authority ... to the benefit of the students ... and ... to the citizens to the end that Texas may achieve excellence for college education for its youth. Review the victims of this ordeal. Too many were hurt. The Texas Veterans Commission took an interest. The pattern of racial discrimination was discovered by a predecessor CSM Fant. He was terminated before plaintiff. Government interest in eradicating racial discrimination substantially outweighs whatever burden denial" ***etc Bob Jones University v United States, 461 U.S. 574***. United States consented to be sued and the consent is interpreted strictly. *United States v. Sherwood , 312 U.S. 584, 586 , 590 (1941)*. Expert witnesses, such as Army Inspector General LTC Luther Berry, now testify while Lieutenant General Robert Wetzel remains firm for reinstatement with seniority. University defendant's denial that plaintiff even raised contract service discrimination charge is clearly refuted and one of the material issues. Appeal consideration weighs heavily for obstruction of justice and fraud upon the court. Evidence was capable for a favorable ruling to plaintiffs and award for special damages and compensation and now judgment as a matter of law *Nelson v. City of Irvine, 143 F.3d 1196, 1200 (9th Cir. 1998).* Defendant's interpretation of 32 CFR & 562.4 (e), the vicarious liability and premise they need no legal justification to retaliatory discharge a DoD employee misses the mark. If successful, it will be ironic that an Army Ranger who went from Major to Sergeant influenced the course of legal change and history for military service members. Isn't this what makes America so great? Each of us can make a difference. We must have patience and allow the system to work and make America stronger as time moves on.

Prayer: This Court grant judgment as a matter of law, and in the alternative, remand to the 5th Circuit Court of Appeals consistent with the publication of this opinion.

Respectfully Submitted,

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STATEMENT CONCERNING INSTRUCTIONS AND VIRUSES

This brief is prepared on Windows 7.0 in Microsoft Word. It may be viewed on any program compatible with this computer language.

This is to certify the absence of computer viruses. The software used to ensure that the brief in virus free is McAfee October 1998.

James D. Boswell

Certificate of Compliance

This writ is submitted in accordance with and is in compliance with rule 33.2.

There are 40 pages including 13, 958 words; 38 paragraphs, 1052 lines typed on 12/14 pitch; Microsoft word 5.0

James D. Boswell
Pro Se

CERTIFICATE OF PROOF OF SERVICE IN THE SUPREME COURT OF THE UNITED TATES in

JAMES D. BOSWELL, Individually and on behalf of all others similarly situated; VANESSA LACE BOSWELL, Individually and on behalf of all others similarly situated; SHAUNA MROSKI, Individually and on behalf of all others similarly situated

Plaintiffs-Appellants-Petitoner

v.

BOARD OF TRUSTEES TEXAS CHRISTIAN UNIVERSITY (individual members (in their official capacities only); GEORGE BUSH, Governor, individual and official capacity; DANIEL JAMES, Major General, Adjutant General of Texas, LOUIS CALDERA, Secretary of the Army, National Guard Bureau Agency,

Defendants-Appellees-Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH

USDC No. 4:00 - CV-1526-Y, Fifth Circuit N0 00-11360 and USDC No. 4:98-CV-168-Y No-00-10698

I do declare this writ of certiorari and appendix to the writ is prepared in accordance with rule 33.2. In accordance with the service rules Supreme Court rule 29 (3) for writs prepared under 33.2, one copy of the writ is served to each of the parties listed on the petition through their attorney of record. The writ and appendix was served by certified priority mail, return receipt requested to Texas Christian University Defendants is Richard De Berry, McDonald and Sanders, 1300 Continental Plaza, 777 Main Street, Ft Worth Texas 76102 (817 336 8651) and for United States Defendants is Wayne Hughes, Jr. Assistant United States Attorney, 801 Cherry St. Suite 1700, Ft Worth Tx 76102-6897 (817 252 5200), and for Texas Government employees, Mr. Peter J. Strelitz, Capitol Station, PO Box 12548, Austin Texas, 78711-2548 (512 463 2120) on this date 7 December 2001. I declare under the penalty of perjury that the forgoing is true.

James Boswell

James Douglas Boswell, Pro Se
414 Morrison Dr.
Euless TX 76039
817 358 9911 fax 817 358 0291

CERTIFICATE OF PROOF OF SERVICE IN THE SUPREME COURT OF THE UNITED TATES in

JAMES D. BOSWELL, Individually and on behalf of all others similarly situated; VANESSA LACE BOSWELL, Individually and on behalf of all others similarly situated; SHAUNA MROSKI, Individually and on behalf of all others similarly situated

Plaintiffs-Appellants-Petitoner

v.

BOARD OF TRUSTEES TEXAS CHRISTIAN UNIVERSITY (individual members (in their official capacities only); GEORGE BUSH, Governor, individual and official capacity; DANIEL JAMES, Major General, Adjutant General of Texas, LOUIS CALDERA, Secretary of the Army, National Guard Bureau Agency,

Defendants-Appellees-Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH

USDC No. 4:00 - CV-1526-Y, Fifth Circuit N0 00-11360 and USDC No. 4:98-CV-168-Y No-00-10698

I do declare this Appendix to writ of certiorari was served by certified priority mail, return receipt requested to Texas Christian University Defendants is Richard De Berry, McDonald and Sanders, 1300 Continental Plaza, 777 Main Street, Ft Worth Texas 76102 (817 336 8651) and for United States Defendants is Wayne Hughes, Jr. Assistant United States Attorney, 801 Cherry St. Suite 1700, Ft Worth Tx 76102-6897 (817 252 5200), and for Texas Government employees, Mr. Peter J. Strelitz, Capitol Station, PO Box 12548, Austin Texas, 78711-2548 (512 463 2120) on this date 7 December 2001. I declare under the penalty of perjury that the forgoing is true.

James Boswell

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817 358 9911 fax 817 358 0291

Supreme Court, U.S.
FILED

(1)

011103 DEC 8 2001

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

JAMES D. BOSWELL, Individually and on behalf of all others similarly situated; VANESSA LACE BOSWELL, Individually and on behalf of all others similarly situated; SHAUNA MROSKI, Individually and on behalf of all others similarly situated

Plaintiffs-Appellants-Petitoner

v.

BOARD OF TRUSTEES TEXAS CHRISTIAN UNIVERSITY (individual members (in their official capacities only); GEORGE BUSH, Governor, individual and official capacity; DANIEL JAMES, Major General, Adjutant General of Texas, LOUIS CALDERA, Secretary of the Army, National Guard Bureau Agency,

Defendants-Appellees-Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION FOR LEAVE TO FILE WRIT OF CERTIORARI IN VETERAN STATUS

Rule 40 authorizes a military service member to proceed as a veteran. The attached declaration provides the necessary justification for approval of this motion. According to rule 40, the motion shall proceed and be attached to each copy of the petition for writ of certiorari.

Respectfully,

Jim Boswell
PRO SE
414 Morrison Drive
Euless TX 76039
817 358 9911

Statement of Declaration to the Clerk of the Court
Supreme Court of the United States
1 First Street, N. E.
Washington, DC 20543

I am James Boswell. I reside at 414 Morrison Drive, Euless TX 76039 and may be reached by fax 817 358 0291 or email JBosRanger@aol.com.

this date, 7 December 2001, I certify that per the final Army agency order dated 6 December 2000 that I was recently retired from the military involuntary and that I have a DD form 214 affording me retroactive retirement from active duty effective June of 1993 in the grade of Army Major. I am a Vietnam Era Veteran and earned a regular army officer commission June of 1973.

Rule 40 authorizes a military service member to proceed as a veteran and be accommodated by a declaration setting out the moving party's status. Appellant is suing to establish reemployment rights under provisions of federal and state WPA and retaliation law according to provisions in rule 40 (1).

James Boswell

James D. Boswell
PRO SE
414 Morrison Drive
Euless TX 76039
817 358 9911

CERTIFICATE OF PROOF OF SERVICE FOR MOTION TO LEAVE IN THE SUPREME COURT OF THE UNITED STATES

JAMES D. BOSWELL, Individually and on behalf of all others similarly situated; VANESSA LACE BOSWELL, Individually and on behalf of all others similarly situated; SHAUNA MROSKI, Individually and on behalf of all others similarly situated

Plaintiffs-Appellants-Petitoner

v.

BOARD OF TRUSTEES TEXAS CHRISTIAN UNIVERSITY (individual members (in their official capacities only); GEORGE BUSH, Governor, individual and official capacity; DANIEL JAMES, Major General, Adjutant General of Texas, LOUIS CALDERA, Secretary of the Army, National Guard Bureau Agency,

Defendants-Appellees-Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH

USDC No. 4:00 - CV-1526-Y, Fifth Circuit N0 00-11360 and USDC No. 4:98-CV-168-Y No-00-10698

I do declare this MOTION was served by certified priority mail, return receipt requested to Texas Christian University Defendants is Richard De Berry, McDonald and Sanders, 1300 Continental Plaza, 777 Main Street, Ft Worth Texas 76102 (817 336 8651) and for United States Defendants is Wayne Hughes, Jr. Assistant United States Attorney, 801 Cherry St. Suite 1700, Ft Worth Tx 76102-6897 (817 252 5200), and for Texas Government employees, Mr. Peter J. Strelitz, Capitol Station, PO Box 12548, Austin Texas, 78711-2548 (512 463 2120) on this date 7 December 2001. I declare under the penalty of perjury that the forgoing is true.

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

(3)

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

APPENDIX

IN THE SUPREME COURT OF THE UNITED STATES

JAMES D. BOSWELL, Individually and on behalf of all others similarly situated; VANESSA LACE BOSWELL, Individually and on behalf of all others similarly situated; SHAUNA MROSKI, Individually and on behalf of all others similarly situated

Plaintiffs-Appellants-Petitoner

v.

BOARD OF TRUSTEES TEXAS CHRISTIAN UNIVERSITY (individual members (in their official capacities only); GEORGE BUSH, Governor, individual and official capacity; DANIEL JAMES, Major General, Adjutant General of Texas, LOUIS CALDERA, Secretary of the Army, National Guard Bureau Agency,

Defendants-Appellees-Respondent

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH

USDC No. 4:00 - CV-1526-Y, Fifth Circuit N0 00-11360 and
USDC No. 4:98-CV-168-Y No-00-10698

PETITION FOR A WRIT OF CERTIORARI

James Douglas Boswell, Pro Se
414 Morrison Dr.
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APPENDIX - ADDENDUM A

Court of Appeals order dated

11 September 2001 (00-10698)

IN THE UNITED STATES COURT OF APPEAL
FOR THE FIFTH CIRCUIT

U.S. COURT OF APPEALS
FILED
SEP 11 2001
CHARLES R. FULBRUGE III
CLERK

No. 00-10698

JAMES D. BOSWELL,

Plaintiff-Appellant,

versus

DONALD H. RUMSFELD, The Secretary of Defense; ET AL,

Defendants,

TEXAS CHRISTIAN UNIVERSITY; WILLIAM E. TUCKER, Dr., Chancellor; MICHAEL D. MCCRACKEN, Dean,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:98-CV-168-Y

ON PETITION FOR REHEARING EN BANC

Before

(✓) Treating the petition for rehearing en banc as a petition for panel rehearing, it is ordered that the petition for panel rehearing is DENIED. No member of the panel nor Judge in regular active service of this Court having requested that the Court be polled on rehearing en banc (Federal Rule of Appellate Procedure and Local Rule 35), the petition for rehearing en banc is DENIED.

( ) Treating the petition for rehearing en banc as a petition for panel rehearing, the petition for panel rehearing is DENIED. The judges in regular active service of this Court having been polled at the request of one of the judges and a majority of the judges not having voted in favor of it (Federal Rule of Appellate Procedure and Local Rule 35), the petition for rehearing en banc is DENIED.

Boswell has also moved to consolidate his petition for rehearing en banc with a petition for rehearing en banc pending in Boswell v. Bd. of Trustees Tex. Christian Univ., No. 00-11360 (5th Cir. June 13, 2001) (unpublished). That motion is DENIED.

Moreover, having been previously sanctioned in Boswell v. Cohen, No. 99-10161, for filing a baseless petition for rehearing en banc, Boswell was aware that a baseless petition for rehearing en banc could result in further sanctions against him. Nevertheless, Boswell persisted in presenting a baseless petition. Accordingly, IT IS ORDERED that Boswell is sanctioned in the amount of $200, to be paid to the Clerk of this court within 30 days of the date of this order.

FOR THE COURT:

UNITED STATES CIRCUIT JUDGE

CLERK'S NOTE:

SEE FRAP AND LOCAL RULES 41 FOR STAY OF THE MANDATE.

N0 00-10698
In The U.S. Court of Appeals
For Fifth Circuit

JAMES DOUGLAS BOSWELL, PLAINTIFF - APPELLANT

VS

WILLIAM COHEN; ETC; ET AL, DEFENDANTS

TEXAS CHRISTIAN UNIVERSITY
WILLIAM E. TUCKER, DR CHANCELLOR
MICHAEL D. MCCRACKEN DEAN
DEFENDANTS -APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

FORT WORTH USDC No. 4:98 - CV-168-Y

PETITION FOR REHEARING ENBANC COURT ORDER FILED 14 June 2001

James Douglas Boswell, Pro Se
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Plaintiff - Appellant
Fax 817 358 0291

CERTIFICATE OF INTERESTED PARTIES

(1) Number of the case and style Civil Action N0 98-10698 Boswell v. Cohen USDC No. 4:98 - CV-168-Y Whistle Blower and Federal Discrimination Case based on retaliation.

(2) Plaintiff's daughters Shauna Mroski and Vanessa Boswell have an interest because they sustained injury from defendant's actions. Shauna provided testimony concerning false imprisonment and violation of constitutional rights, and damage, as she perceives it. Given a trial, appellant would include a witness list. Their interest is purely that justice be served. Plaintiff has not yet contacted these personnel, but their affidavits are part of the courts record.

(3) The Secretary of Defense, Honorable William Cohen, the former Secretary of the Army, Honorable Togo West, Louis Caldera, Texas Christian University, Chancellor William E. Tucker and Dean Dr. Michael McCracken, The National Guard Bureau Chief Lieutenant General Baca and Lieutenant General Davis. Other parties not part of the suit are the members of Texas Christian University Board of Governors (old and new) estimated 60 personnel from 1986 to present, significant donors to TCU.

(4) Connection and Interest. Attorney for Record for Texas Christian University Defendants is Richard De Berry, McDonald and Sanders, 1300 Continental Plaza, 777 Main Street, Ft Worth Texas 76102 and for United States Defendants is Wayne Hughes, Jr. Assistant United States Attorney, 801 Cherry St. suite 1700, Ft Worth Tx 76102-6897.

(5) In addressing rule 35.2.2, plaintiff is not represented by counsel.

James D. Boswell
Pro se
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817 358 9911

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STATEMENT OF THE ISSUES

Enbanc consideration is necessary to protect service members from abuse and to maintain uniformity with Senator Sam Nunns sentiment "Mr. Boswell's case merits careful review in light of the strong public policy against whistle blower retaliation" page 158 in the court record. The panels decision conflicts with Supreme Court decision *West Department of Veteran Affairs v Gibson 14 June 1999 N0 98-238* concluding that *42 U.S.C. & section 2000e 16 (c)* empowers court to entertain an action by a complaint still aggrieved after final action; the mandate in *United States v McClendon 5th cir No 98-10478, Jul 29, 1998;* the authoritative Whistle Blower decision of *Texas Dept. Of Human Resources v. Green No 3-92-059-CV (Tex. App.Austin 1993, n.w.h),* interpretation in *Breax v City of Garland v.205 F.3d 5th Cir 2000* of the exhaustion of remedy doctrine (of a *42 U.S.C 1983* and *Tex Govt Code 554.001 Vernon Sup. 2000*) where "notice giving effect" is a compliance requirement. The final agency order acknowledges official retaliation and this was sufficient to constitutional injury, violation of constitutional rights and new trial *(Jackson v Van Winkle, 660 S.W. 2d 807, 809).* The proceeding involves multiple questions of exceptional and importance involving not only issues from a whistle blower perspective by the Republican's first nomination for the Secretary of Defense as he articulates in his letter dated 16 September 1996, but concerning violation of due process and proffered reasons for unlawful discharge for opposing *Title VI, VII and*

Title IX discrimination. The panel ruling is inconsistent *with Pederson v. Louisana Stat Univ. 201F. 3d 388, 406 (5th cir. 2000)* and with 9th circuit Court opinion in *Coveau v. American Airlines 9955032, CV-97-06731-JSL, July 17,2000* and the continuing violation doctrine and title VII protection against retaliatory discrimination as described in *Felder D.C UAL Corporation 9th cir appeal 98-3551 and Supreme Court decisons in Bulington Industries v Ellerth 118S.Ct 2257 (1998) and Faragher v. City of Boca Raton, 118 S.Ct. 2275 (1998).* Several questions loom. Is the Nation served when retaliation prevails as a deterrent for reporting violation of law and crime? We all know military instructors can't have sex with recruits; then why defend these institutions as they reap $ 6,000,000 annually in Title IX funds. Is there one more concerned with the lack of enforcement control? Is conduct lawful when the evidence shows it is outrageous? (arbitrary cadet disenrollment; silence; threats; lack of due process; psychiatric evaluation). Service members are in despair and without remedy. The trend continues. "What mechanism will challenge the entrenched dysfunctional management system that is the cause of the lack of retention for military service members and millions of tax payer dollars?" Important? As of 19 June 2001, an Internet cite contains 1127 members, mostly warn down Veterans, who signed a petition expressing sentiments and injury about *Feres.* To the average juryman, like injustices will zoom straight for the heart. Tax payers have no choice but to compensate for miserable defects in troubled agencies and University programs which

are protected by systemic flaws - in investigations and administrative and court proceedings. Petitioners had a 1% chance of being heard by the Military Board, yet met rigid Armed Services criteria for new evidence (similarly to DNA). It paints now a much different picture and one which has caused damage to plaintiff, victims and society. Gratitude goes to 100 Americans. Who will you believe - Col. Ezzel -the Marine (excerpt 10), deposition of an Army Colonel Chief of Staff (exc 4), the female cadet victim (exc 8), a black victim (exc 5), the death threat (exc 6), Lieutenant Colonel Bright's confession (exc 10) (the Navy Captain page 1568), or plaintiff's civil service supervisor (page 1644) or the Union President, a POW, or Pastors, School Administrators, a County Judge, Senator Gram? Each response contributes - negates the adverse rulings - begs to make America better. Who knows which statement, or affidavit caused the FBI's referral and DOD Inspector General Military Whistle Blower Investigation nexus for, ten years later, and the Corrections Board's reversal of the Army's position? Is a pay off to TCU (page 1580) more persuasive? Facts are in dispute that retaliation resulted in adverse employment actions, Tort damage and conspiracy to harm plaintiff and family members. If this happens to an officer-well trained and led - airborne - ranger- pathfinder, Command - General Staff graduate - MPA from UNT - undergraduate UT, imagine the unprotected impressionable recruit, the uneducated in an environment - no one is looking. This case experienced military resistance to change and to admit error, a political

climate concerned about damage repair, Community, University and Military bonding and judicial restraint to convince the adjudicator that our institutions can do no wrong. This court's quandary (as "Why has the case gained force, over the ten year duration?") may result in conclusion that the victimization of the African Americans and females has been a tragic part of our American heritage and history. As witnesses and victims, one by one, come forward, weaned from the abuses, in honesty and truth, these revelations have potential to shock the conscience of a jury. Here, jury deprivation is unconscionable and unconstitutional: Evidence hoarded by Defendants was pivotal and when the District Court denied reopening the case, the court abused its discretion.[1] Misinterpretation of the *Feres Doctrine, Tort Law, EEOC guidelines and precedent, Whistle Blower Statutes and Exhaustion of Remedy Doctrine* has harmed the panels ruling. Army leadership is helpless. We need help.

COURSE OF PROCEEDINGS AND DISPOSITION OF THE CASE

---

[1] A district court may abuse its discretion if it does not apply the correct law or if it rests its decision on a clearly erroneous finding of material fact." *Bogovich v. Sandoval, 189 F.3d 999, 1001 (9th Cir. 1999) (quoting United States v. Plainbull, 957 F.2d 724, 725 (9th Cir. 1992)).* A district court "shall grant leave to amend freely `when justice so requires.' " *Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc) (quoting Fed. R. Civ. P. 15(a)).* We have stated that "this policy is to be applied with extreme liberality." *Morongo Band of Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990); see also Griggs v. Pace Am.Group, Inc., 170 F.3d 877, 880 (9th Cir. 1999)* (noting that inferences should be drawn "in favor of granting the motion"). In determining whether leave to amend is appropriate, the district court considers "the presence of four factors: bad faith, undue delay, prejudice to the opposing party, or futility." *Griggs, 170 F.3d at 880.*

Boswell 1 (USDC 4:98 CV-198-Y) filed 23 February 1998, commenced TORT and punitive damage action in the Federal District Court of North Texas against Texas Christian University, the Adjutant General of Texas, Secretary of Defense and Secretary of the Army. Honorable Judge Means accepted the U.S Attorney's argument for State and U.S. Defendants that plaintiff had not exhausted administrative remedy. Judge Means dismissed the case with prejudice in favor of Government Defendants and ruled in favor of Texas Christian University Defendants for Summary Judgment on 29 January 1999. This ruling was made in default although excusable extenuating circumstances justified extension for one more day. On appeal (99-10161), Fifth Circuit ruled lack of jurisdiction 16 December 1999, and the United States Supreme Court denied certiorari (case 99-2010) on 2 October 2000. Since January 29 1999, intervening evidence and events provided cause to reopen Boswell I and begin Boswell II against different actors. United States Army Claims provided waiver to sue 14 April 2000 and the EEOC provided its waiver 13 June 2000 for complaint T -0279-TX-A-04-99-L submitted 5 April 1999. Both agencies provided statutory instructions granting plaintiff permission to commence legal action in the Federal Northern District Court of Texas. On 10 and 29 September 1999, the Office of Special Counsel case N0 MA 99-1931 and Merit Systems Protection Board held "lack of jurisdiction", that the Governor and Adjutant General of Texas are state, not federal employees, and dismissed plaintiff's civil service whistle blower case without

prejudice giving impetus for Boswell II Cause No 067-182444 00 in the 67th Judicial Court of Tarrant County, filed March 24 2000, moved to Federal Court cause number 400-CV-1440E, and dismissed without prejudice on 5 September 2000. Plaintiff(s), now three, restructured the case (400-CV-1526Y) adding federal defendants and statutes. Expecting bias, plaintiffs requested Judge Means recusal. Plaintiffs pled fraud and claims similar in nature, but new and different than Boswell I, added claims against different Defendants and for individual capacity. Judge Means dismissed Boswell II with prejudice for *Res Judicata* and cautioned Plaintiffs with sanctions. On 12 May 2000 Judge Means denied Plaintiffs motions to reopen Boswell I and related motions submitted on 18 January 2000 and again on April 17 2000. On appeal, Fifth Circuit Court of Appeals affirmed, levied a sanction March 17 2000 and provided the enclosed ruling Cause No. 00- 10698, 14 June 2001.

STATEMENT OF ANY FACTS

The University and Army investigated plaintiffs protected disclosures 19 December, 1986, violated plaintiffs due process and unlawfully terminated plaintiff 22 December 1986. Plaintiff was discharge from the Army 12 April 1989. Testimony shows 22 allegations: An IG investigation substantiating six. Army Senior Officials (Office of the Army Chief of Staff Testimony Colonel William Parnell III, Marine Colonel Don Essel, Army Inspector General LTC Luther Berry, and Lieutenant General Robert Wetzel), since, conclude (No 99-10161 record excerpt marked appendix 2 pages 3-9)

that the investigations resembled anything but being complete and thorough. The University denied that plaintiff raised any racial allegations and this is one of many factual and genuine disputes. Defendants held critical evidence capable of not only negating defendants affirmative defense but sufficient to warrant judgment as a matter of law. Affidavits attached to plaintiffs motion and contained in record excerpt 5 affirms defendant's intimidation of a witness prepared to testify for plaintiff. Three separate witnesses provide testimony to a criminal connection and possible hate crime and argue a causal effect for his subsequent disappearance and AWOL - while he was two years short of a full pension. Fraud on this court and a series of bad faith actions are genuine material disputes. Reasonable doubt exists for motive and cover up to avoid liability and accountability for commencement of felony offenses, racial discrimination and hate crime; Texas 32. 45 - (excerpt 7) Misapplication of fiduciary property; conspiracy to avoid criminal prosecution for violation of 10 U.S.C. adultery, sexual abuse, harassment and assault (excerpt 8). On 29 January, 1992, the Texas National Guard assigned plaintiff to Army Sergeant. Plaintiff entered Civil Service November 1992 as a GS-7 in the Texas National Guard. In 1993 plaintiff won Brigade runner up for NCO of the year and complained through Union grievances and Equal Opportunity systems. In March 1993, the Texas Veterans Commission represented plaintiff during an Army Discharge Review Board. It should be no surprise that the Board found inequity and recommended the maximum

statutory relief available. As the Department of Army declined to accept the Board's findings, senior Army officials, members of United States Senate Armed Services Committee, and Chairman of the Joint Chiefs of Staff initiated a DOD IG Military Whistle Blower investigation H94156226017 completed in May, 1995. Responding to the former Chairman of the Senates Committee on Armed Services 16 September 1996, the Army Board for Correcting Military Records (ABCMR) in May, 1997 accepted the DOD IG Whistle Blower finding that the discharge from the Armed Services was arbitrary. The ABCMR ruled: the 1989 discharge was of no effect; reinstatement to the grade of Army Major; retroactive retirement to 1993 from 1973; a back pay settlement. On 15 October 1998 plaintiffs Union President notified the agency of a failure to bargain in good faith. Plaintiff exposed corruption involving program fraud, pornography, and discrimination. This had the causal effect for additional retaliation and adverse employment actions. On 5 February 1999 the Texas Guard terminated plaintiff involuntarily from civil service. As a result of a chance meeting at a retirement briefing, Army Lieutenant Colonel Bright confessed his role in the Army conspiracy affirming other Defendants' roles, motive and criminal connection for racial motivated crime. His statement, March 9, 1999, was endorsed by United States Senator Phil Gramm and sent to the Secretary of the Army. The ABCMR reopened the case. The Board directed additional favorable personnel actions but falls way short of what is entitled by law. Numerous affidavits now corroborate

material facts and provide factual assessments of misconduct, cover up, and conspiracy, sufficient to negate and vacate the Courts ruling in Boswell I and to justify reversal in judgment as matter of law. The Texas National Guard defendants responded 15 April 1999 to plaintiff's various Freedom of Information Request submitted on or about January 1998 with 245 pages of damaging evidence after the trial including a Navy Captain investigation of additional reprisal, mistreatment, and command abuse to plaintiff. Captain Miller recommended that the Army Colonel be disciplined. But the command obstructed this evidence from this court, with held this finding from plaintiff, ignored the finding and promoted the Colonel to Brigadier General. This General provided oversight for plaintiff's termination from civil service, 5 February 1999. This disclosure, although to late for trial, shows persuasive evidence of plaintiffs protected disclosures and for the first time an admission from an Army Captain about his viewing pornographic sex videos in the work place during civil service hours. A jury may conclude that service members are victimized and retaliated when reporting government corruption and that Army grievance and equal opportunity processes are procedurally flawed. This should prescribe EnBanc importance and set precedence for the protection of future leaders and recruits. On 20 March 2000 Clinton Payne and on 4 April 2000 plaintiff's Army supervisor's provide extenuating facts and circumstances for overturning the default judgment in Boswell I and justification for the court to apply equity to the court's inconsistency. On 12

September 2000 the Federal Labor Relations Board (Dallas Region) cited the Texas National Guard and General Daniel James with an unfair labor practice - retaliation in the work place. All combined, this evidence is sufficient to negate Judge Means adverse rulings in Boswell I and II. Let the record reflect - Plaintiff complained through Union civil service grievance procedures and the EEOC about the cover up of sexual impropriety and pornography in the work place. Shortly after, the Bedford Texas court reporter on 15 October 2000 released a media report of the arrest of plaintiff's co-worker for solicitation of sex with a child and possession of boy nude photographs. Subsequently, this co worker accepted a felony conviction. Retaliation damaged family members and had the effect of destroying a promising career. On 28 August 2000 plaintiff received back pay and on 6 December 2000, the ABCMR ruled favorably on a personnel issue and directed plaintiff be considered for promotion to Lieutenant Colonel.

ARGUMENT AND AUTHORITIES

1. Whether the DC unfairly deny the motion for (1) a new trial (2) leave to supplement the record (3) new evidence to vacate the summary and final judgment is worthy of enbanc consideration because of the U.S. 9th Circuit Court of Appeals, *Couveau v American Airlines 9955032, CV-97-06731-JSL, July 17, 2000* reversing judgment and nearly identical to Boswell I and Boswell II. For new trial, 1/18/2000, the court ruled "still pending 5th Circuit Court of Appeals". Resubmitted 4/17/2000, the ruling was dismissal. Equitable tolling applies for investigations, appeal and fraud. Clearly, the court has abused discretion. MSG Sam Kinser, plaintiff's supervisor, and

affidavits marked "filed 18 January 2000"document fraud and reprisal and permissible excuse for missing a suspense by one day. Motion (page 6) references the Soldiers and Sailors Civil Relief Act of 1940, 50 U.S.C. app & 520 (1) 1988, O'Conner Rules 7 A 3.4 and 3.6, and FRCP 55 (b) (2). Affirming a default ruling and denying plaintiff a hearing was abuse of discretion. *Corveau* held where the record is silent as to a district court's reason for granting an order for summary judgment, the order cannot be affirmed based on a plaintiff's violation of a local rule. The *Couveau* Appeals court reasoning encompasses five areas: a) compliance with a local rule b) exhaustion of administrative remedy c) Statute of Limitations, Estoppel and waiver d) Laches and e) Availability of Punitive Damages. *Couveau* and *Boswell* each encompass two separate cause of actions, Suite I and Suite II, reasonably related, to the allegations made in the first suit. *Couveau* and *Boswell* describe unlawful discharge in 1989 and corrective action ten years later. *Couveau* and *Boswell* both involve retroactive back pay and application of right to sue letter. *Courveau* is applicable to *Boswell.*

2. Whether the court properly applied the *Feres Doctrine. Boswell* is prime example of improper application of the Feres doctrine and warrants reversal as *U.S. Court of Appeals in Bradley v United States of America, No. 96-2569, Cortez v. United States , 854 F.2d 723, 727 (5th Cir. 1988)), and United States v. Brown , 348 U.S. 110 (1954).* Analogous to *Bradley*, in *Boswell*, the District court did not consider Plaintiff's defenses because it was submitted one day late and violated a local rule. Disposition of a post service suit independent of service-connected injury is addressed: *Cortez v. United States , 854 F.2d 723 (5th Cir. 1988; Kendrick , 877 F.2d at 1204 n.2. Anderson v. Liberty Lobby, Inc. (1986); Brown , 348 US at 112. Kendrick , 877 F.2d at 1204 n.2. McGowan v. Scoggins , 890 F.2d 128, 137-39 (9th Cir. 1989).* The underlying facts presents a situation in which the plaintiff was receiving post-

service treatment in civilian status for a condition that arose out of military service in a discharge status. Even if the court were to accept that "some" of the Tort action arose out of an activity incident to service, the court should accept that the application of *Feres* to bar suit infringes on the United States Constitution and plaintiff's ability to seek redress, accountability and equal treatment provided to other citizens. Injury occurred after the unlawful discharge (April 1989). The damages resulted from defendants fraudulent practices, a loss of pay, and loss of privileges, medical and educational benefits to **each** family member. The focus of Feres is not upon when the injury occurs or when the claim becomes actionable, rather it is concerned with when and under what circumstances the negligent act occurs. This Doctrine is a statutory barrier for service members with legitimate claims of "intentional torts and medical malpractice", arising from service to our nation, to access the federal judiciary. In all, the doctrine allows for human/constitutional rights violations and corruption within the United States Armed Forces to go unchecked as the Cox Commission reports[2] on May 31, 2001 to the Congress and Department of Defense.

3. Whether court misapplied law and appropriately weighed the evidence. By preponderance of evidence (see 10698 record excerpts) and motive, this court must agree the Defendants and Trial Court's Court decision is arbitrary. *(Wright v. USPS, United States Court of Appeals for the Federal Circuit, Docket No. 98-3260 BrfRep-00004301, 1998; 1999).* The District Court misapplied the law by accepting that TCU, a Private University, is not governed by state government and not subject *to TX Govt. Code 554.002 (Vernon 1988) (Texas Whistle Blower Act);* Plaintiff was not a

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[2] **"An examination of the claims that have been barred by the doctrine, and a comparison of service members rights to those of other citizens, could reform military legal doctrine in light of present day realities and modern tort practice. Revisiting the Feres Doctrine would also signal to service members that the United States government is committed to promoting fairness and justice in resolving military personnel matters."**

University employee; that there was no report to an appropriate law Enforcement agency; that the Claim was not timely filed, time barred, and nonjustifiable; no claims under 29 U.S.C. 2615, 42 U.S.C. 1981, 42 U.S.C. 2000e-5, 10 U.S.C. 1034; U.S. has not waived sovereign immunity. *In Weldon* , Weldon was unable to prove causation, pursuant to Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 2671 et seq, *Weldon v. United States , 744 F. Supp. 2d Cir. 1991), cert. Denied , 504 U.S. 988 (1992).* This case is in apposite because the affidavit of Sam Kinser shows justification concerning independent equity action pursuant to Rule 60(b) seeking to vacate the 1998 action for default. Defendant committed fraud upon the court. *Weldon v. United States , 845 F. Supp. 72, 74 (N.D.N.Y. 1994*). Unlike Weldon, the *Boswell* witnesses prove wrong doing and that the government has "proffered that plaintiff did suffer from injury". Plaintiff prevails because of expert testimony and official records of three Army Board actions, EEOC and Whistle Blower investigations. Beyond reasonable belief, retaliation is shown. In *Boswell* the experts initially testified against and reversed them selves. As for Legal precedence, after plaintiff reported a felony offense, defendants were involved in conspiracy to harm plaintiff and daughters; escorted Major Boswell and 12 year old daughter to the hospital for mental evaluation. Daughters' emotional trauma is an issue for trial. *PEOPLE v. MCCOY, No S087893 (Cal. June 25, 2001).* New discovery shows violation of the antifraud provisions and the need for discipline. *Jones v. SEC, United States Court of Appeals for the Fourth Circuit, 115 F.3d 1173 (4th Cir. 1997) BrfRep-00000992, June 1996*. This case should have went to trial. *Nationwide Ins. v. Bd. of Trustees of Univ. of Ill., United States Court of Appeals for the Seventh Circuit 116 F.3d 1154 (7th Cir. 1997) BrfRep-00001716, 1996*. Not only should the underlying judgment be vacated, but a full and fair opportunity should be devoted to hear the allegations of unethical legal malpractice. *Gordon v. Winer, United States Court of Appeals for the Eighth Circuit,*

96-3124 BrfRep-C0006668, 1996. The University breached a fiduciary responsibility *Insulfoams, Inc., United States District Court for the Western District of Pennsylvania CA95-1644 BrfRep-00000406, 1995* and violated a breach of contract and tortuous interference with business relations claims *Manahar v. Massillon Community Hosp. Ohio Supreme Court Case No. 97-2149 BrfRep-00002249, February 1998.* The Department of the Army expunged all references to plaintiff's termination concerning his protected disclosures and whistle blower claim. *McGowan v. Metro-Dade Police Department, Florida Court of Appeals, Docket No. 98-01456 BrfRep-00004239 September 1998.* Punitive damages are appropriate because the Administrative Board properly determined that retaliation was a contributing factor in defendant's decision to discharge plaintiff and because defendant acted with reckless disregard for plaintiff's protected civil rights. *Couch v. Sprint Corp. United States Court of Appeals for the Eighth Circuit, 97-1368WMKC BrfRep-C0006837 June 10, 1997.* The court failed to resolve the factual disputes and the tortuous breach of verbal and written agreement is not prohibited from going to trial. *Dunkin v. Boskey, California Court of Appeal - First Appellate District, 98 Cal.Rptr.2d 44 (Cal.App. 1 Dist. 2000); Docket No. A086866 BrfRep-00004372 2000).* All prior actions do not have a preclusionary effect of the present actions. *Sunkist Growers, Inc. v. Fisher 9th Cir., 104 F.3d 280 (9th Cir. 1997).*

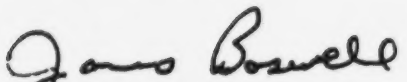
SUMMARY AND CONCLUSION

As a matter of law, appellants suffered. This raises a fact issue which must be sent to a jury. *See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S.Ct 2548, 2552 (1986).* Failing to place particular reliance on the testimony, with proof of causation, and misevaluation is abuse of discretion. The district court denied Boswell motion to reopen the judgment pursuant to Rules 59 and 60(b) of the Federal Rules of Civil

Procedure and for further discovery pursuant to Rule 56(f). The United States committed "fraud, misrepresentation, and other misconduct" and "fraud upon the court," for which appellants are entitled to equitable relief. Specifically, pursuant to FRCP 60(b), Boswell 1 requests vacature of the summary judgment and remand for trial. Reliance on the fact that appellants was granted "a full and fair opportunity to litigate present claims" is misplaced. Claims of fraud and misconduct are not barred. The court has not shown that "the situation in which plaintiff finds himself are not due to own fault, neglect or carelessness. Since the FTCA provides remedies for money damages, see 28 U.S.C. § 1346(b), and provided this limited waiver of sovereign immunity, it may not argue, the government may not be sued. Granting exception to this explicit waiver is unlawful. *United States v. Timmons , 672 F.2d 1373 (11th Cir. 1982)* The United States consented to be sued: Such consent must be interpreted strictly. *United States v. Sherwood , 312 U.S. 584, 586 , 590 (1941).* This court is not limited by Rule 60 (b) to grant a new trial or to entertain an independent action to relieve a party from a judgment [or] order. The court has inherent 'ancillary' equitable jurisdiction to entertain the suit for relief from the judgment." *Martina Theatre Corp. v. Schine Chain Theatres, Inc. , 278 F.2d 798, 800 n.1 (2d Cir. 1960)* *Cresswell v. Sullivan & Cromwell , 922 F.2d 60 (2d Cir. 1990).* Boswell had no opportunity to litigate the allegations of fraud: This action may go forward. *See Leber-Krebs, Inc. , 779 F.2d at 899.* Under elementary principles of fairness and justice, the action is treated as continuation of the former action. *See 7 James W. Moore, Moore's Federal Practice 60.38[1], at 60-399 (2d ed. 1995).*

Prayer: That a Rehearing EnBanc conclude relief from judgment, vacature/stay of mandate under Fed. R. App. P. 41, reversal of judgment as a matter of law, and in the alternative, remand for new trial.

Respectfully,



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CERTIFICATE OF SERVICE

By certified mail on 4 August 2001, return receipt requested, the plaintiff served the attached document Petition for Hearing EnBanc to the following defendants:

Attorney for Record for Texas Christian University Defendants is Richard De Berry, McDonald and Sanders, 1300 Continental Plaza, 777 Main Street, Ft Worth Texas 76102

Attorney for United States Defendants is Wayne Hughes, Jr. Assistant United States Attorney, 801 Cherry St. Suite 1700, Ft Worth Tx 76102-6897

Attorney for Texas Government employees, Mr. Peter J. Strelitz, Capitol Station, PO Box 12548, Austin Texas, 78711-2548.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U.S. COURT OF APPEALS
FILED
JUN 14 2001
CHARLES R. FULBRUGE III
CLERK

No. 00-10698
Conference Calendar

JAMES D. BOSWELL,

Plaintiff-Appellant,

versus

DONALD RUMSFELD, The Secretary of Defense, ET AL.,

Defendants,

TEXAS CHRISTIAN UNIVERSITY; WILLIAM E. TUCKER, Dr., Chancellor; MICHAEL D. MCCRACKEN, Dean,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:98-CV-168-Y

Before WIENER, DeMOSS, and DENNIS, Circuit Judges.

PER CURIAM:*

James D. Boswell, pro se, appeals the district court's denial of his motion for relief from judgment filed pursuant to Fed. R. Civ. P. 59(e) and 60(b). Boswell also moves for leave to file an out-of-time reply brief; that motion is GRANTED.

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Boswell's motion for relief from the judgment sought other relief, but he has not argued the other bases for the motion; accordingly, he has abandoned them. Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993). Boswell contends that he is entitled to relief from the judgment on the ground of newly discovered evidence.

Because Boswell's motion was not filed within ten days of the judgment it cannot be considered a timely motion to alter or amend the judgment pursuant to Rule 59(e). See Fed. R. Civ. P. 59(e). Further, a Rule 60(b) motion for relief from judgment on the ground of newly discovered evidence must be filed not more than one year after the judgment. See Fed. R. Civ. P. 60(b). Boswell's motion was filed more than 14 months after the judgment. Under these circumstances, the district court did not abuse its discretion in denying the motion. See Seven Elves, Inc. v. Eskenazi, 635 F.2d 396, 402 (5th Cir. 1981).

This appeal is without arguable merit and thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5th Cir. R. 42.2.

APPENDIX - ADDENDUM B

Court of Appeals order dated

September 2001 (00-11360)

IN THE UNITED STATES COURT OF APPEAL
FOR THE FIFTH CIRCUIT

No. 00-11360

U.S. COURT OF APPEALS
FILED
SEP 1 1 2001
CHARLES R. FULBRUGE III
CLERK

JAMES D. BOSWELL, Individually and on behalf of all others similarly situated; VANESSA LACE BOSWELL, Individually and on behalf of all others similarly situated; SHAUNA MROSKI, Individually and on behalf of all others similarly situated,

Plaintiffs-Appellants,

versus

BOARD OF TRUSTEES TEXAS CHRISTIAN UNIVERSITY, individual members (in their official capacities only); GEORGE BUSH, Governor, individual and official capacity; DANIEL JAMES, Major, Adjutant General of Texas; LOUIS CALDERA, Secretary of the Army, National Guard Bureau Agency,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:00-CV-1526-Y

ON PETITION FOR REHEARING EN BANC

Before WIENER, DeMOSS, and DENNIS, Circuit Judges.

(✓) Treating the petition for rehearing *en banc* as a petition for panel rehearing, it is ordered that the petition for panel rehearing is DENIED. No member of the panel nor Judge in regular active service of this Court having requested that the Court be polled on rehearing *en banc* (Federal Rule of Appellate Procedure and Local Rule 35), the petition for Rehearing *En Banc* is DENIED.

( ) Treating the petition for rehearing *en banc* as a petition for panel rehearing, the petition for panel rehearing is DENIED. The judges in regular active service of this Court having been polled at the request of one of the judges and a majority of the judges not having voted in favor of it (Federal Rule of Appellate Procedure and Local Rule 35), the petition for Rehearing *En Banc* is DENIED.

Boswell has also moved to consolidate his petition for rehearing *en banc* with a petition for rehearing *en banc* pending in *Boswell v. Rumsfeld*, No. 00-10698 (5th Cir. June 14, 2001) (unpublished). The motion is DENIED.

Moreover, having been previously sanctioned in *Boswell v. Cohen*, No. 99-10161, for filing a baseless petition for rehearing *en banc*, Boswell was aware that a baseless petition for rehearing *en banc* could result in further sanctions against him. Nevertheless, Boswell persisted in presenting a baseless petition. Accordingly, IT IS ORDERED that Boswell is sanctioned in the amount of $200, to be paid to the Clerk of this court within 30 days of the date of this order.

FOR THE COURT:

UNITED STATES CIRCUIT JUDGE

CLERK'S NOTE:

SEE FRAP AND LOCAL RULES 41 FOR STAY OF THE MANDATE.

U.S. COURT OF APPEALS
RECEIVED
AUG 6 2001
NEW ORLEANS, LA.

N0 00-11360
In The U.S. Court of Appeals
For Fifth Circuit

JAMES DOUGLAS BOSWELL, VANESSA LACE BOSWELL, SHAUNA MROSKI, Individually and on behalf of all others similarly situated
PLAINTIFFS -APPELLANTS
VS
BOARD OF TRUSTEES TEXAS CHRISTIAN UNIVERSITY, Individual members (in their official capacity only); GEORGE BUSH, Governor of Texas, individual and official capacity; DANIEL JAMES, Major General, Adjutant General of Texas; LOUIS CALDERA, Secretary of the Army, National Guard Bureau Agency

DEFENDANTS - APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TX
FORT WORTH USDC No. 4:00 - CV-1526-Y

PETITION FOR REHEARING ENBANC COURT ORDER FILED 13 June 2001

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U.S. COURT OF APPEALS
FILED
JUL 26 2001
CHARLES R. FULBRUGE III
CLERK

CERTIFICATE OF INTERESTED PARTIES

(1) Number of the case and style Civil Action N0 00-11360 Boswell et al v. Board of Trustees Texas Christian University et al USDC No. 4:00 - CV-1526-Y Texas Title II and Whistle Blower and Federal Discrimination Case based on retaliation.

(2) Plaintiff's daughters Shauna Mroski and Vanessa Boswell have an interest because they sustained injury from defendant's actions. Shauna provided testimony concerning false imprisonment and violation of constitutional rights, and damage, as she perceives it. Given a trial, appellant would include a witness list. Their interest is purely that justice be served. Plaintiff has not yet contacted these personnel, but their affidavits are part of the courts record.

(3) The Secretary of Army Louis Caldera, Texas Christian University, Trustees, estimated 60 personnel from 1986 to present and significant donors to TCU, President George W. Bush, and Major General Daniel James have interest.

(4) Connection and Interest. Attorney for Record for Trustee, Texas Christian University Defendants is Richard De Berry, McDonald and Sanders, 1300 Continental Plaza, 777 Main Street, Ft Worth Texas 76102 and for United States Defendants is Wayne Hughes, Jr. Assistant United States Attorney, 801 Cherry St. suite 1700, Ft Worth Tx 76102-6897. For State Defendants is Attorney Peter Strelitz, Capitol Station, P.O. Box 12548, Austin Texas 78711-2548.

(5) In addressing rule 35.2.2, plaintiff is not represented by counsel.

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Continuing Retaliation 12

STATEMENT OF THE ISSUES

Senator Sam Nunn states "Mr. Boswell's case merits careful review in light of the strong public policy against whistle blower retaliation" page 158 in the court record. Enbanc consideration is necessary to protect[1] service members from abuse. A departure is necessary from the usual practices[2] which has placed this Nation in quandary. In time of war, a break through - a turning point is required to prevail. In peace, departure from once thought - exceptional, well put together doctrine - has to happen for growth. Application of the status quo is unappealing. Maintaining judicial uniformity leaves a bad taste because of the impact of inherent unfairness, injustices and obsolete doctrine. Even the courts are reluctant to change. "Are service members applied equal treatment?" Misconduct and claims of fraud are not barred by principles of *res judicata*. One reason is defendants are sued in their individual capacities, ***Andrews v. Daw,*** *United States Court of Appeals for the*

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[1] Armed Services antidote to the denial will be confession. Admitting guilt will go along way to recruitment, retention, and readiness. Consider financial costs for the shortcomings - the bite to the tax payer wallet, advertisement and incentives to compensate for "Americans" cynicism and question of Armed Services practice of fairness, equity, and justice. Why are we spinning our wheels and losing productivity? Just as there is a correlation between child hood and outcome, there appears to be nexus in cause and effect between damage to a military person and EX-military damage to society e.g. whether homeless or a hardened criminal. Seeking peace is the antidote to retaliation. Commitment is required to improving Armed Services accountability.

[2] DOD IG web site, http://www.dodig.osd.mil/audit/reports/index.html results of the audits from the IG to Congress: Whistle Blower statistics April thru Sep 2000 (the latest publish report) DOD IG auditors realized $ 201 million in monetory benefits 191 indictments 152 convictions; 253 ongoing investigations senior official misconduct; 20 cases were closed concerning allegations of improper referrals for mental health; 297 cases of military whistle blower reprisal.

Fourth Circuit Docket No. 986329P BrfRep-00004052, 1999: The decision conflicts with Supreme Court decision *West Department of Veteran Affairs v Gibson 14 June 1999 N0 98-238* concluding that *42 U.S.C. & section 2000e 16 (c)* empowers court to entertain an action by a complaint still aggrieved after final action; with *Texas Dept. Of Human Resources v. Green No 3-92-059-CV (Tex. App.Austin 1993, n.w.h)*[3]; with exhausting administrative remedy *Breax v City of Garland v.205 F.3d 5th Cir 2000.* "What happens when the Agency is given notice and sets on it, resists final decision, uses bureaucratic crutch to avoid investigation and adjudication? The final agency order 6 December 2000 suggests an occurrence sufficient to constitutional injury, violation of constitutional rights and new trial *Jackson v Van Winkle, 660 S.W. 2d 807, 809.* Conspiracy is an exceptional and important issue not only from Senator Nunn's whistle blower perspective (16 September 1996), but from the perspective of due process. The evidence is sufficient for vacating Boswell I placing strength in anti discrimination law concerning *Title VI, VII and Title IX.* Plaintiff received a full confession from one of the conspirators. Vanessa Boswell and Shauna Mroski were injured and not party to Boswell 1.

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[3]*The Whistleblower Act seeks to protect the individual employee against the collective acts of the agency, the bureaucracy, the institution, the system that retaliates, and does not seek to protect the employee solely against the acts of an individual supervisor. The act unambiguously waves the governmental immunity from suit and from liability of governmental suits seeking redress for retaliation.* Texas Dept. of Human Services v. Green, NO. 3-92-059-CV, (Tex. App.—Austin, 1993, n.w.h.), at pg. 8 of the opinion.

Besides the panels inconsistencies with this and other circuits,[4] several questions loom. Is the Nation served when the University and Government Agency discriminates and retaliates? While the laws prohibit instructor-student or cadre - cadet sex, the judicial system is expected to hear the claims not abandon them for technical reasons argued in the EnBanc Boswell 1. Officials may not take students earned money. This was a felony. Clearly University and Army responsible officials killed the messenger; yet continued to enjoy secure employment and annually, $ 6,000,000 in Title IX funds. Outrageous conduct included arbitrary cadet disenrollment; silence; law firm threat; lack of due process; psychiatric evaluation; reputation damage; and termination. This rises to the level for EnBanc consideration. *Feres* also warrants EnBanc treatment because of its harm to society. It is not abandoned, but argued in Boswell's request for enbanc hearing. Boswell II's rehearing focus is *Res Judicata.* The court must question an entrenched dysfunctional management system which resulted in an EEOC discrimination complaint based on religion[5]. As of 19 June 2001, an Internet cite contains 1127

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[4] *Pederson v. Louisana Stat Univ. 201F. 3d 388, 406 (5th cir. 2000); Coveau v. American Airlines 9955032, CV-97-06731-JSL, July 17,2000* and the continuing violation doctrine and title VII protection against retaliatory discrimination as described in *Felder D.C UAL Corporation 9th cir appeal 98-3551 and Supreme Court decisons in Bulington Industries v Ellerth 118S.Ct 2257 (1998) and Faragher v. City of Boca Raton, 118 S.Ct. 2275 (1998).*

[5] As there is confusion in a child's mind as how to react to the bully in the school, try to relate to the promises made to a female recruit or cadet as she attempts to understand command abuse. It takes courage, self control, and maturity. James 1:19-20: "My friends, be quick to hear. Listen even when others are speaking hard words. Be slow to react. Be very slow to anger and

members, mostly warn down Veterans, who signed a petition expressing sentiments and injury about *Feres*. To the average juryman and tax payer, these injustices zoom straight for the heart. Its bothersome to compensate for miserable defects in troubled agencies and University programs protected by systemic flaws - in investigations and administrative and court proceedings. As for EnBanc, Petitioner had the same 1% chance of being heard by the Military Board, and met rigid Armed Services criteria. A reversal in Army position in administrative proceeding will likely have perspective effect in judicial proceedings. Gratitude goes to at least 100 Americans. Who will the court join? the Marine (court record page 157), deposition of an Army Colonel Chief of Staff (489- 497)[6], the female cadet victim (page 192-3), the Union President (229), the Court reporter (page 302), a POW (505), Chaplains, Pastors, School Administrators, a County Judge, Senator Gram? Each affidavit contributes - negates the adverse rulings - begs to make America better. For the accountant, the pay off check to TCU (page 159) may be more persuasive? The largest dispute is that Defendants retaliation actions resulted in adverse employment actions, Tort damage and harm to each plaintiff. If retaliation is predicted for the exceptionally trained and gifted, what methodology protects an impressionable recruit or cadet?

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retaliation. For the anger of man will never achieve the righteousness of God." The tendency is to defend, respond, fight back. For the trained military elite, we are expected to lead.

[6] They had a sizable pot of money, and now this cadet fund was used to pay air fare and other expenses . . . Come on! So when I read that, that caused me to read a lot deeper. I think it was a

This case experienced Defendants resistance to change and failure to acknowledge impropriety in the work place. This case gained force because of the goodness in people. If the victimization of the African Americans and females in this case is allowed to stand without judicial accountability, a responsibility is attached - our American heritage and history.

Escaping retaliation, witnesses now request to appear before a judicial tribune and be a part in correcting an injustice. Misinterpretation of *Res Judicata Doctrine* as well as the arguments presented in Boswell I for enbanc consideration concerning *Feres Doctrine, Tort Law, EEOC guidelines and precedent, Whistle Blower Statutes and Exhaustion of Remedy Doctrine* has inappropriately influenced the ruling. The leadership of the Army, the recruit, the cadet, our future leaders need this court's input to show a caring interest in the affairs of all service members similarly to all citizens.

COURSE OF PROCEEDINGS AND DISPOSITION OF THE CASE

Boswell II (USDC 4:00 CV-1526 Y) filed 5 September 2000, on the hills of Boswell 1 filed 23 February 23 1998, commenced TORT and punitive damage action against said defendants. The Trustees of Texas Christian University and the Honorable Governor of Texas are new and the Adjutant General of Texas in sued in individual capacity. Judge Means prematurely dismissed the case without the U.S Attorney's argument, with prejudice. The case was timely appealed to 5th Circuit court of appeals. While Boswell 1 focused on a new trial, the issue before Boswell II

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bunch of crap. I think it was put together in a way that would maintain the image of every thing being in accordance with absolutely simon-pure propriety at the University".

is whether appellant appropriately addressed *res judicata* in the **initial brief**[7], and if so the issue is whether the 1998 action (Boswell I) before Judge Means has the effect of claim preclusion for the appellant 2000 action (Boswell II). Plaintiffs appellants in either case have not been afforded a hearing. Intervening evidence, unavailable or disallowed in Boswell I is incorporated in Boswell II. The authority for Boswell II was provided by: 1) the U. S. Army Claims in their consent for waiver to sue, 14 April 2000 2) the EEOC's waiver, 13 June 2000, for complaint T -0279-TX-A-04-99-L submitted 5 April 1999 through the Texas Guard 3) the Office of Special Counsel case N0 MA 99-1931 and Merit Systems Protection Board's dismissal of plaintiff's civil service on 10 and 29 September 1999 4) the persistence of the U.S. Attorney that plaintiff exhaust military remedy and 5) an unfair labor practice charge. Boswell II started as a State action Cause No 067-182444 00 in the 67th Judicial Court of Tarrant County, filed March 24 2000, moved to Federal Court cause number 400-CV-1440E, (dismissed without prejudice on 5 September 2000), and refiled as cause 400-CV-1526Y. The court refused to take notice of these agencies statutory instructions. Plaintiffs pled fraud and claims similar in nature, but new and different than Boswell I. Judge Means dismissed the case on November 17 2000 finding the claims are identical and cautioned Plaintiffs with sanction and denied all related motions. On appeal on 13 June 2001, Fifth Circuit Court of Appeal (cause 00-11360) affirmed. (attached).

STATEMENT OF ANY FACTS

On 19 December 1986 Plaintiff provided the University and Army with protected disclosures concerning sexual impropriety, racial discrimination, and the felonious offense of misapplication of fiduciary property. On April 12 1989 plaintiff was

[7] "A party is not bound by the label he puts on his papers. A motion may be treated as an independent action or vice versa as is appropriate." *11 Charles A. Wright et al., Federal Practice*

terminated from the Army as a causal effect. Plaintiff entered civil service as a GS 7 and as an Army Technician in the grade of Sergeant in November 1992. Starting in 1993 complainant provided the Texas Guard protected disclosures of corruption. A DOD investigation May of 1995 concluded violation of plaintiffs due process and unlawful retaliation for the discharge in 1989. In May 1997 the ABCMR declared the termination's from the University 22 December 1986 and Army 12 April 1989 void. In civil service, on 15 October 1998, plaintiffs Union President notified the agency of a failure to bargain in good faith concerning protected disclosures involving program fraud, pornography, and discrimination. On 22 October 1998 the media reports the arrest of plaintiff's co-worker for solicitation of sex with a child and possession of boy nude photographs. In November 1998 the EEOC investigated discrimination based on religion and retaliation. On 23 March 1999 Senator Phil Gram's endorsed the conspirators' confession of witness intimidation and criminal connection showing Defendants bad faith. From January 2000 through September 2000 several witnesses provide affidavits which show that six black employees were unnecessarily discriminated. On 5 February 1999 Plaintiff received a retaliatory discharge from civil service. On 15 April 1999, the government released FOIA material containing a citation where an Army Colonel was recommended for discipline for retaliation against plaintiff. On 28 August 2000 plaintiff received back pay. On 12 September 2000 the Federal Labor Relations Board (Dallas Region) cited the Texas National Guard and General Daniel James with an unfair labor practice - retaliation in the work place. On 6 December 2000, the ABCMR ruled favorably on a personnel issue and directed plaintiff be considered for promotion to Lieutenant Colonel. The Army Board for Correcting Military Records (ABCMR) 6 December 2000 proffered that the termination from active duty was arbitrary and of

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& Procedure: Civil § 2868, at 405 (2d ed. 1995).

no effect. Plaintiffs still grieve and seek damages. The evidence is much more complete and thorough than Boswell I due to Army Lieutenant Colonel James Bright's confession (excerpt 8), release of investigations, and discovery via FOIA. Prevailing at administrative hearings resulted in a change of tide because witnesses desired to set the record straight and expressed interest in joining this class action suit, filed 5 September 2000.

ARGUMENT AND AUTHORITIES

Whether the DC unfairly applied the Doctrine of *Res Judicata*. The court erred in concluding that "Appellants do not argue *res judicata* as a basis for dismissing their complaint". *Res judicata* did not bar plaintiff's action for tortuous breach of verbal and written agreement. ***Dunkin v. Boskey,*** *California Court of Appeal - First Appellate District, 98 Cal.Rptr.2d 44 (Cal.App. 1 Dist. 2000); Docket No. A086866 BrfRep-00004372 2000*. This case is nearly identical to U.S. 9th Circuit Court of Appeals, *Couveau v American Airlines 9955032, CV-97-06731-JSL, July 17, 2000,* but is inconsistent with the ruling to reverse and remand. Appellants identify *res judicata* issues in Appellants Brief page 5. The court order does not argue the absence of argument of the doctrine of *res judicata* in the Reply Brief contained on page 6. Plaintiff's first argument for claim preclusion has an opposite twist. Plaintiffs, early on, argue reasons for recusal concerning repetitive bias and prejudice. Federal judges in the military accused of impartiality, recuse themselves. Other mitigating circumstances apply: The Colonels' citation for unlawful refusal of legal assistance hindered an adequate defense as well as the government constraint of ten years worth of back payThe FLRB found retaliation.[8] Yet, witnesses still feared retaliation disadvantaging plaintiff. The court would not authorize discovery and this

[8] The FLRB required Defendant Army General, Major General Daniel James to place notice on public bulletin boards. The notice implied that victim of retaliation could raise a claim.

had the effect of concealing more fraud and with holding explanation for unreasonable search and seizure of evidence. The court ruled *Res Judicata* without the U.S. defendants response to pleadings. U.S. defendants argument against plaintiff can now be used to justify Boswell II[9] urging administrative exhaustion. It is inaccurate to interpret that plaintiffs abandon *res judicata* doctrine because the issue is not labeled. *Res judicata* does not bar appellants from litigating their TORT, EEOC, Civil Rights actions, *MSPB* whistle blower action, an Unfair Labor Charge in violation of *Texas State Law Title II*. The District Court can not litigate the matters for lack of jurisdiction. The argument fails by *Res Judicata* definition. Amendment in Boswell I was moot until plaintiffs had exhausting administrative remedy. Appellants argue that *Res Judicata* is prohibited (brief page 5) by complaining of prospect right to sue based on the EEOC letter on 13 June, 2000 and the Army TORT Claims waiver on 14 April 2000. Administrative remedy to expunge the discharge and correct the record by 5th circuit's *City of Garland interpretation*, has the effect of allowing suit within 30 days of the letter confirming exhaustion of remedy. Claims are tolled. The economic harm was not realized until the government rendered settlement, 28 August 2000. Facts for Boswell II were not available for Boswell I. [10] Defendants have failed to meet the burden of proof[11]. The

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[9] Motion by petitioner to consolidate appeal in related cases (99-60398) with 99-10161 stating "Boswell has petitioned this court for review of his final settlement of back active duty and retired pay, as a result of a decision by the Army Board for Correction of Military Records (ABCMR)... The law in this Circuit is clear. Failure of a plaintiff to exhaust intra service administrative remedies deprives this court of jurisdiction . *Von Hoffburg v. Alexander, 615 F. 2d 633, 637-38 (5th Cir, 1980) and Hodges v. Callaway, 499 F.2d 417, 420 (5th Cir. 1974).* Accordingly, this court (Court of appeals) should dismiss the appeal until Boswell has exhausted administrative remedies." Court of Federal Claims has exclusive jurisdiction. ... Case must be filed with the U. S. Claims Court. (The Claims letter disputes this finding).

[10] The fact that both suits involved essentially the same course of wrongful conduct is not decisive; nor is it dispositive that the two proceedings involved the same parties, similar or overlapping facts, and similar legal issues. A first judgment will generally have preclusive effect only where the transaction or connected series of transactions at issue in both suits is the same,

pro se litigants may have not used certain titles and terminology, but the preclusion doctrine was argued. Everywhere appellants refer to the "*date*" 29 January 1999, plaintiffs argue "*res judicata*" but not by topic. Plaintiff argues *Res Judicata* each time by referral "the February 1998 action". Appellant brief page 7 addresses the substantial intervening events and specifically makes reference to the Court date and invokes *Res judicata* listing details for the 1998 action. Boswell II is significantly different - Plaintiffs plead fraud and conspiracy quoting judicial citations and para 1 of 5.3 federal rules (page 8). Significant facts, absent from Boswell I, due to non disclosure, came after Boswell I was filed. Defendant's conduct created restriction to pursue amendment. Framing of the complaint is crucial[12]. Plaintiffs were under no ~~obligation to a~~mend its complaint in Boswell I , and *res judicata* does not bar litigation of claims arising from transactions which occurred after the action was brought. Appellants addressed in the initial brief six reasoning factors for not filing amendment to Boswell I (page 11). A significant factor to the claim preclusion balance test is the final Army settlement, 6 December 2000 which found additional

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that is where the same evidence is needed to support both claims, and where the facts essential to the second were present in the first. *Interoceanica Corp. , 107 F.3d at 91 (quoting SEC v. First Jersey Sec. , 101 F.3d 1450, 1463-64 (2d Cir. 1996)).*

[11] *Interoceanica Corp. v. Sound Pilots, Inc. , 107 F.3d 86, 90 (2d Cir. 1997) (citing Restatement (Second) of Judgments § 24(b)(1982)). a* The burden is on the party seeking to invoke *res judicata* to prove that the doctrine bars the second action. *Thomas v. New York City, 814 F. Supp. 1139, 1148 (E.D.N.Y. 1993).*

[12] "[t]he scope of litigation is framed by the complaint at the time it is filed." *Los Angeles Branch NAACP v. Los Angeles Unified Sch. Dist. , 750 F.2d 731, 739 (9th Cir. 1984)* (filing of supplemental complaint based on defendant's wrongful conduct occurring after filing of original complaint is not mandatory). The res judicata doctrine does not apply to new rights acquired during the action which might have been, but which were not, litigated. *See First Jersey Sec. , 101 F.3d at 1464; Los Angeles Branch NAACP , 750 F.2d at 739.* Although a plaintiff may seek leave to file a supplemental pleading to assert a new claim based on actionable conduct which the defendant engaged in after a lawsuit is commenced, see Fed. R. Civ. P. 15(c), he is not required to do so, *see First Jersey Sec. , 101 F.3d at 1464; see also Manning , 953 F.2d at 1360* (res judicata does not make filing of supplemental pleadings mandatory); *Prime Management Co., Inc. v. Steinegger , 904 F.2d 811, 816 (2d Cir. 1990); Los Angeles Branch NAACP , 750 F.2d at 739.*

error and provided additional relief concerning a performance evaluation rendered on April 12 1989. This agency order noted the prejudice. Even if we were to assume that Boswell 1 arose from transactions identical to those in Boswell II, the Governor of Texas and the Trustees were not defendants in Boswell I. As we learned from the 5th Circuit's ruling in the *City of Garland*, the federal district court in Boswell I could not have exercised personal jurisdiction over Boswell II defendants in actions involving the Texas Whistle Blower Act , EEOC, TORT and Secretary of the Army without first requiring plaintiffs to exhaust all administrative remedies. Boswell 1 makes no mention to a hate crime, the disappearance: Boswell II considers the racism as a major issue. Boswell I did not request class certification. Boswell II does. Pending investigations and administrative adjudication prevented appellants from raising claims in Boswell I[13]. *Owens vrs Kaiser Foundation 9th Circuit No. 99-56466, March 26 2001.* The confession statement provided the discovery to argue for the first time: "Family members (Shauna and Vanessa) are victims of conspiracy and injury" . Boswell II was initially filed in state court and addresses violation of specific state law statutes[14]. Boswell 1 was strictly federal. Defendants have failed to show how Boswell I has a preclusion jurisdiction effect over different actors. Appellants Brief at page iv and v cite numerous reasons for claims preclusion

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[13] Res judicata will not apply where "'the initial forum did not have the power to award the full measure of relief sought in the later litigation.'" *Burgos v. Hopkins , 14 F.3d 787, 790 (2d Cir. 1994) (quoting Davidson v. Capuano , 792 F.2d 275, 278 (2d Cir. 1986)).* Even where a second action arises from some of the same factual circumstances that gave rise to a prior action, res judicata is inapplicable if formal jurisdictional or statutory barriers precluded the plaintiff from asserting its claims in the first action. ("'When such formal barriers in fact existed and were operative against a plaintiff in the first action, it is unfair to preclude him from a second action in which he was disabled from presenting in the first.'") (quoting *Restatement (Second) of Judgments § 26(1)(c) cmt. c (1982)).*

[14] The exercise of jurisdiction is proper if the defendant has sufficient contacts to satisfy both the state long arm statute and the Due Process Clause of the Fourteenth Amendment. *See Chaiken v. VV Publ'g Corp. , No. 95-9301, 1997 WL 403511, at *6 (2d Cir. July 21, 1997).*

and why *res judicata* does not prevent this action. Appellants assert a new **Title IX claim and state Title II claim**. Appellants asserted new facts against different parties which were concealed during Boswell I. The D.C. abused its discretion[15]. Defendants failed "to offer a plausible explanation to the pleadings resulting in several material facts in dispute". This has caused a substantial delay and expense to appellants as they have diligently pursued EEOC, Tort Claims, and Administrative remedy. Appellants offered competent evidence to explain each of the four factors applied in Griggs. "Appellants are not estopped from pursuing their claims and just compensation". The facts are in apposite to *Lockheed Martin Corp. v. Network Solutions, Inc., 194 F.3d 980, 986 (9th Cir. 1999).* To make plaintiff whole once again, now, affidavits clearly and succinctly show malice and destructive intent. Defendants are estopped from asserting res judicata because the Defendants are not the same. Discovery provided that different parties are at fault: Fraudulent concealment and conspiracy can now be easily reconstructed for a jury to render verdict. *Res Judicata* competes with the doctrine of *Continuing Retaliation.* Claims are based on a completely different set of nucleus facts[16]. The EEOC right[17] to sue governs the additional actions in a civil service environment. The cause to injury, malice and economic damage, inapplicable to res judicata, is adequately referenced in appellants brief. Requiring appellants to pay appellees court cost is inconsistent

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[15] In determining whether leave to amend is appropriate, the district court considers "the presence of any of four factors: bad faith, undue delay, prejudice to the opposing party, and/or futility." *Griggs, 170 F.3d at 880.*

[16] "The central criterion in determining whether there is an identity of claims between the first and second adjudications is `whether the two suits arise out of the same transactional nucleus of facts.' " *Frank v. United Airlines, Inc., 216 F.3d 845, 851 (9th Cir. 2000).*

[17] Title VII requires that a plaintiff obtain a "right to sue" letter from the EEOC before filing an action. *See Valenzuela v. Kraft, Inc., 801 F.2d 1170, 1172-74 (9th Cir. 1986), amended by 815 F.2d 570 (9th Cir. 1987).*

with *Owens vrs Kaiser Foundation No. 99-56466, March 26 2001 9th cir*[18]. Appellants are entitled to relief. In comparison with *Owens*, it is inequitable for plaintiff to bear appellees cost. The court did not articulate a substantial reason to deny leave to amend *Wimm v. Jack Eckerd Corp, 3 F.3d 137,139 (5th cir. 1993)*. Appellants could not litigate a Title VII claim in a prior court proceeding, when the offense had not even occurred. The court's ruling has the effect of barring the 1 October 1999 EEOC complaint. Complaints could not be raised. Some did not exist[19]. All grounds for recovery could not have been asserted because of - different parties - different actions. In *Gregory v. Widnall, 153 F.3d 1071, 1074 (9th Cir. 1998)* the court held that *res judicata* bars consideration of a hostile work environment claim that could have been raised in a prior action between the **same parties.** Daughters, given these circumstances, have the right to opt out[20] and pursue separate action. Resolving the *res judicata* question in defendants favor defeats any future remedy for the grievance. One reason to proceed is to achieve justice. If *res judicata* is held, the posture of the case will "lead to the wrong result" with respect to Due Process questions: 1) judicial review of grievance and agency orders 2) opt-out

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[18] "Each party shall bear its own costs. Application of the doctrine of resjudicata is not barred merely because they did not receive "right to sue" letters from the "EEOC" until after their earlier action had been dismissed with prejudice."

[19] "Res judicata bars litigation in a subsequent action of any claims that were raised or could have been raised in the prior action." *W. Radio Servs.Co. v. Glickman, 123 F.3d 1189, 1192 (9th Cir. 1997).* The doctrine is applicable whenever there is "(1) an identity of claims, (2) a final judgment on the merits, and (3) identity or privity between parties."

[20] *In Tricor v. Brown U.S. 1994*, the settlement was res judicata but the Court of Appeals for the Ninth Circuit reversed. 982 F.2d 386 (1992). The court agreed that respondents could nevertheless relitigate the same claims against petitioners: "Because [respondents] had no opportunity to opt out of the litigation, we hold there would be a violation of minimal due process if [respondents'] damage claims were held barred by res judicata." Id., at 392. *See 7A C. Wright, A. Miller, & M. Kane, Federal Practice.* Ninth Circuit reversed, accepting contention that it would violate due process to accord res judicata effect to a judgment in a class action that involved money damages claims against a plaintiff in the previous suit who had not been afforded a right to opt out on those claims. *982 F.2d 386, 392 (CA9 1992). Phillips v. Shutts, 472 U.S. 797 (1985).*

right in federal class actions involving claims for money damages 3) denying the EEOC and Tort claims giving rise to a presumption of unconstitutionality. Constitutional issues are fairly joined. This court has obligation for resolve - particularly when facts and affidavits in the record reflect institutional discrimination. *In Weldon,* Weldon was unable to prove causation, pursuant to Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 2671 et seq, *Weldon v. United States , 744 F. Supp. 2d Cir. 1991), cert. denied , 504 U.S. 988 (1992).* This case is in apposite. As a matter of law, appellants suffered. This raises a fact issue which must be sent to a jury. *See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S.Ct 2548, 2552 (1986).* The district court failed to place particular reliance on the testimony and misevaluated the evidence for causation. The district court abused its discretion for not granting the United States' explicit waiver of sovereign immunity from actions alleging fraud providing in the right to sue. Since the FTCA provides remedies for money damages, see 28 U.S.C. § 1346(b), and provided this limited waiver of sovereign immunity, it may not argue, the government may not be sued. Sovereign immunity does not preclude an independent action against the United States for fraud upon the court. As the request for an enbanc rehearing in Boswell I articulates, the appeal court is not limited by Rule 60 (b) to grant a new trial. *Cresswell v. Sullivan & Cromwell , 922 F.2d 60 (2d Cir. 1990. Martina Theatre Corp. v. Schine Chain Theatres, Inc. , 278 F.2d 798, 800 n.1 (2d Cir. 1960).* Even if the court did not accept appellant's Rule 60(b) motion,[21] because Boswell **could not** raise the claims and **had no opportunity** to litigate the allegations of fraud on the court; therefore, this action may go forward.*Leber-Krebs, Inc. , 779 F.2d at 899.*

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[21] "Res judicata does not preclude a litigant from making a direct attack [under Rule 60(b)] upon the judgment." *Watts v. Pinckney , 752 F.2d 406, 410 (9th Cir. 1985). Taggart v. Time 924 F.2d 43, 45-46 (2d Cir. 1991)*

SUMMARY AND CONCLUSION

As a matter of law, appellants suffered. This raises a fact issue which must be sent to a jury. *See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S.Ct 2548, 2552 (1986).* Failing to place particular reliance on the testimony, with proof of causation, and misevaluation is abuse of discretion. Since both the EEOC and FTCA provides remedies for money damages, see 28 U.S.C. § 1346(b), and provided this limited waiver of sovereign immunity, it may not argue, the government may not be sued. Granting exception to this explicit waiver is unlawful. *United States v. Timmons , 672 F.2d 1373 (11th Cir. 1982)* The United States consented to be sued: Such consent must be interpreted strictly. *United States v. Sherwood , 312 U.S. 584, 586 , 590 (1941).*. Expert witness, Army Inspector General LTC Luther Berry, now testifies while Lieutenant General Robert Wetzel remains firm for reinstatement with seniority.

The University's denial that plaintiff raised a racial allegation is clearly refuted and one of many factual, material issues. Enbanc consideration weighs heavily for obstruction of justice and fraud upon the court. This evidence was capable of not only negating defendants affirmative defense but Appellants were entitled to judgment as a matter of law[22].

Prayer: Rehearing EnBanc conclude relief from judgment, vacature/stay of mandate under Fed. R. App. P. 41, reversal of judgment as a matter of law, and in the alternative, remand for new trial.

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[22] In Nelson, Appellants filed a timely notice of appeal and the court has jurisdiction pursuant to 28 U.S.C.S 1291. (9th Cir. 2000) (en banc) (quoting Fed. R. Civ. P. 15(a)). In review de novo an award of judgment on the pleadings" A judgment on the pleadings is properly granted when, taking all the allegations in the pleadings as true, the moving party is entitled to judgment as a matter of law." *Nelson v. City of Irvine, 143 F.3d 1196, 1200 (9th Cir. 1998).*

Respectfully Submitted,

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CERTIFICATE OF SERVICE

By certified mail on 5 August 2001, return receipt requested, the plaintiff served the attached document Petition for Hearing EnBanc to the following defendants:

Attorney for Record for Texas Christian University Defendants is Richard De Berry, McDonald and Sanders, 1300 Continental Plaza, 777 Main Street, Ft Worth Texas 76102

Attorney for United States Defendants is Wayne Hughes, Jr. Assistant United States Attorney, 801 Cherry St. Suite 1700, Ft Worth Tx 76102-6897

Attorney for Texas Government employees, Mr. Peter J. Strelitz, Capitol Station, PO Box 12548, Austin Texas, 78711-2548.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U.S. COURT OF APPEALS
FILED
JUN 13 2001
CHARLES R. FULBRUGE III
CLERK

No. 00-11360
Conference Calendar

JAMES D. BOSWELL, Individually and on behalf of all others similarly situated; VANESSA LACE BOSWELL, Individually and on behalf of all others similarly situated; SHAUNA MROSKI, Individually and on behalf of all others similarly situated,

Plaintiffs-Appellants,

versus

BOARD OF TRUSTEES TEXAS CHRISTIAN UNIVERSITY, individual members (in their official capacities only); GEORGE BUSH, Governor, individual and official capacity; DANIEL JAMES, Major, Adjutant General of Texas; LOUIS CALDERA, Secretary of the Army, National Guard Bureau Agency,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:00-CV-1526-Y

Before WIENER, DeMOSS, and DENNIS, Circuit Judges.

PER CURIAM:*

James D. Boswell, Vanessa Boswell, and Shauna Mroski ("Appellants") appeal the dismissal of their civil complaint. We review *de novo* a dismissal based on *res judicata*. *Schmueser v. Burkburnett Bank*, 937 F.2d 1025, 1031 (5th Cir. 1991).

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Although we afford a liberal construction to *pro se* filings, aines *v. Kerner*, 404 U.S. 519, 520 (1972), *pro se* appellants are equired to brief the issues and reasonably comply with the equirements of Fed. R. App. P. 28. *Grant v. Cuellar*, 59 F.3d 23, 524 (5th Cir. 1995); *Yohey v. Collins*, 985 F.2d 222, 225 5th Cir. 1993). When an appellant does not identify error in he district court's analysis, it is as if the appellant had not ppealed the judgment. *Brinkmann v. Dallas County Deputy Sheriff* bner, 813 F.2d 744, 748 (5th Cir. 1987).

Because the Appellants do not argue that it was error for he district court to have used *res judicata* as a basis for ismissing their complaint, the issue is deemed abandoned by them. *Brinkmann*, 813 F.2d at 748. We do not consider the Appellants' argument raised for the first time in their reply brief. *See Cinel v. Connick*, 15 F.3d 1338, 1345 (5th Cir. 1994 (scope of reply brief is limited, and appellant abandons all issues not raised and argued in initial brief on appeal); *Knighten v. Commissioner*, 702 F.2d 59, 60 & n.1 (5th Cir. 1983) (issue may not be raised for first time in reply brief, even by a *pro se* appellant). The judgment of the district court is AFFIRMED.

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APPLICATION AND AGREEME FOR ESTABLISHMENT OF ARMY RESERVE OFFICERS' TRAINING CORPS UNIT
(AR 145-350)

Form Approved
Budget Bureau Number 22-R317

SUBJECT: Application for the Establishment of Army Reserve Officers' Training Corps Unit

THRU : (1) Commanding General, Fourth United States Army, Fort Sam Houston, Texas

(2) Commanding General, United States Continental Army Command, Fort Monroe, Virginia 23351

TO : The Adjutant General, Department of the Army, Washington, D. C. 20315

APPLICATION

By direction of the governing authorities of Texas Christian University
(Name of Institution)

I, J. M. MOUDY (Name), Executive Vice Chancellor (Title)

hereby submit application for the establishment of a unit in the senior division of the Army Reserve Officers' Training Corps at this institution under the provisions of section 2102, Title 10, United States Code. Attached hereto is a catalog and a statement of particulars with reference to this institution.

AGREEMENT

1. Contingent upon the acceptance of the above application and conditioned upon the fulfillment of all promises enumerated in paragraph 2 following, the Secretary of the Army agrees as follows:

a. To establish and maintain a senior division unit of the Army Reserve Officers' Training Corps at the institution named in the foregoing application.

b. To assign such military personnel as he may deem necessary for the proper administration and conduct of the Army Reserve Officers' Training Corps program at this institution and to pay the statutory compensation to such personnel from Department of the Army appropriations.

c. To provide for use in the Army Reserve Officers' Training Corps program such available Government property as may be authorized by law and applicable tables of allowances, and to pay at the expense of the Government costs of transportation, drayage, packing, crating, handling and normal maintenance of such property, exclusive of costs including utilities, involved in the storage of such property at the institution.

d. To pay at the expense of the Government, subject to law and regulations, retainer pay at a prescribed rate to enrolled members of the Army Reserve Officers' Training Corps admitted to advanced training.

e. To issue at the expense of the Government uniform clothing for enrolled members of the Army Reserve Officers' Training Corps, except that monetary allowances, at the prescribed rate or rates, may be paid in lieu of uniform clothing.

f. In providing financial assistance to specially selected members under the provisions of section 2107 of Title 10, United States Code, to arrange accounting procedures with the appropriate fiscal officer of the institution.

2. Contingent upon the acceptance of this application by the Secretary of the Army and conditioned upon the fulfillment of the promises enumerated in paragraph 1 above, the governing authorities of this institution agree as follows:

a. To establish a Department of Military Science as an integral academic and administrative department of the institution and to adopt as part of its curriculum [ ] (1) a four-year course of military instruction; [ ] (2) a two-year course of advanced training of military instruction; or [X] (3) both of the above, which the Secretary of the Army will prescribe and conduct.

b. To require each student enrolled in any Army Reserve Officers' Training Corps course to devote the number of hours to military instruction prescribed by the Secretary of the Army.

c. To make available to the Department of Military Science the necessary classrooms, administrative offices, office equipment, storage space, and other required facilities on a fair and equitable manner in comparison with other departments of the institution.

d. To grant appropriate academic credit applicable toward graduation for successful completion of courses offered by the Department of Military Science.

e. To arrange for the scheduling of military classes to make it equally convenient for students to participate in Army Reserve Officers' Training Corps as in other courses at the same educational level, and to include a representative of the Department of Military Science designated by the Professor of Military Science on all faculty committees whose recommendations would directly affect the Department of Military Science.

f. To appoint an officer of the institution as military property custodian who will be empowered to requisition, receive, stock and account for Government property loaned to the institution and otherwise to transact matters pertaining thereto for and in behalf of the institution, or to comply with provisions of the supplement to this agreement (DA Form 97[illegible]). If application is made for and the Army accepts responsibility for all Government property provided for military instruction at this institution.

g. To conform to the regulations of the Secretary of the Army relating to issue, care, use, safeguarding, inventory and accounting for such Government property as may be issued to the institution.

h. To comply with the provisions of law and regulations of the Secretary of the Army pertaining to the furnishing of a bond to cover the value of all Government property issued to the institution, except uniforms, expended articles, and supplies expended in operation, maintenance and instruction.

i. To produce a minimum of twenty-five officers each year.

j. To maintain an enrollment of one hundred in the basic course, when the basic course is maintained.

3. It is mutually understood and agreed as follows:

a. That this agreement shall become effective when the authorities of this institution have been notified officially that the Secretary of the Army has approved the establishment of an Army Reserve Officers' Training Corps unit on the date specified.

b. That this agreement may be terminated upon giving one academic year's notice of such intent by either party hereto.

c. That no Army officer shall be assigned to the Department of Military Science without prior approval of the authorities of this institution, and no Army officer will be continued on duty after the authorities have requested his relief for cause.

d. That the Secretary of the Army shall have the right at any time to relieve from duty any officer, warrant officer, or enlisted man of the Army assigned to the institution.

4. The authorities of this institution understand that the law requires that no unit may be established or maintained at an institution unless the senior commissioned officer assigned to the institution is given the rank of professor.

5. This agreement supersedes all existing agreements between the Department of the Army and the institution pertaining to this matter.

FOR THE INSTITUTION

TYPED NAME AND TITLE	SIGNATURE	DATE
J. M. MOUDY Executive Vice Chancellor	J. M. Moudy	26 February 1965

FOR THE SECRETARY OF THE ARMY

TYPED NAME AND TITLE	SIGNATURE	DATE
J. DOUGLAS POTTER, LT COL, AGC ADJUTANT GENERAL	[signature]	3 March 1965

DA FORM 1 JAN 62 918 REPLACES EDITION OF 1 AUG 54, WHICH IS OBSOLETE.

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The Following Agreement Information is to be Considered as Part of the attract.

AGREEMENT REGARDING FACILITIES TO BE PROVIDED FOR THE USE OF THE ARMY RESERVE OFFICERS' TRAINING CORPS PROGRAM, WITHOUT EXPENSE TO THE DEPARTMENT OF THE ARMY

The authorities of the above-named institution agree that the facilities specified below shall be furnished for the use of the Army ROTC program, without expense to the Department of the Army (phrases such as "as needed", "as required", etc., will not be used in describing the following):

1. OFFICES

NO. OF ROOMS	SIZE	BUILDING IN WHICH LOCATED	EXCLUSIVE OR JOINT USE
2	10' x 12'	Sadler Hall	Exclusive
4	8' x 12'	Sadler Hall	Exclusive
1	24' x 24'	Sadler Hall	Exclusive
1	10' x 10'	Sadler Hall	Exclusive

*Specify whether for exclusive use of Army Department or joint use with Air or Naval Science or other Departments.

NOTE: Minimum of eight (8), seven (7) of which contain a minimum floor area of two hundred square feet each, one of which contains a minimum floor area of three hundred square feet.

2. STORAGE ROOMS

a. FOR STORAGE OF CLOTHING, SUPPLIES, SMALL ARTICLES OF EQUIPMENT, ETC.

NO. OF ROOMS	SIZE	BUILDING IN WHICH LOCATED	EXCLUSIVE OR JOINT USE
4	8½' x 14'	Pete Wright Dormitory	Exclusive
1	10' x 14'	Pete Wright Dormitory	Exclusive
3	22' x 14'	Pete Wright Dormitory	Joint with Air Force
3	13' x 13'	Pete Wright Dormitory	Joint with Air Force

b. FOR STORAGE OF LARGE ITEMS OF EQUIPMENT, TRAINING AIDS, MOTOR VEHICLES, ETC. (If available)

1 10' x 20' located in building X Exclusive use
1 18' x 14' located in building X Exclusive use

NOTE: Storage rooms, particularly for clothing and small articles of equipment, must be adequately lighted and ventilated and be provided with shelving, cabinets, and locked arms racks. Windows must be securely barred and doors reinforced and fitted with cylinder locks. For small storage a minimum floor area of one thousand (1000) square feet, and possessing two entrances is required; minimum requirement for large storage is four thousand (4000) square feet.

3a. CLASSROOMS

ROOM AND BUILDING	SEATING CAPACITY	EXCLUSIVE OR JOINT USE
207 Sadler Hall	40	Joint with Air Force
209 Sadler Hall	74	Joint with Air Force

NOTE: Classrooms must be adequately lighted and ventilated and provided with standard equipment. If joint use is specified, rooms must be available for Army ROTC classes when scheduled. Minimum requirement - five classrooms, three of which have a normal capacity of thirty five students and two which have a normal capacity of fifty students.

b. ASSEMBLY HALL

SEATING CAPACITY	[ ] IS [X] IS NOT PROVIDED WITH PROJECTION EQUIPMENT FOR [ ] 35 MM [ ] 16 MM FILM	WILL BE AVAILABLE FOR ARMY ROTC CLASSES AS FOLLOWS:
340		for student orientations

NOTE: Assembly hall should be of adequate size for assembly at entire unit. (Normal size unit - 300)

4a. SIZE OF GYM OR OTHER INDOOR DRILL AREA	b. WILL BE AVAILABLE FOR ARMY ROTC CLASSES AS FOLLOWS:
80' x 120'	During scheduled drill periods

NOTE: Minimum requirement of 7,000 square feet.

5a. SIZE OF OUTDOOR DRILL AREA	b. LOCATION WITH RESPECT TO OFFICES AND STORAGEROOMS	c. WILL BE AVAILABLE FOR ARMY ROTC CLASSES AS FOLLOWS:
300[illegible] x 800[illegible]	Southwest of Sadler Hall	On scheduled drill days

NOTE: Minimum requirement of 10,500 square yards.

6. INDOOR TARGET RANGE

a. NO. OF FIRING POINTS WILL BE UNDER JURISDICTION OF

6 Army ROTC

NOTE: Minimum requirement of five (5) firing points.

7. SPECIFY LOCAL SERVICE OR DISPENSARY FACILITIES AND PERSONNEL WHICH WILL BE AVAILABLE ANNUALLY FOR MILITARY TYPE PHYSICAL EXAMINATIONS OF ARMY ROTC STUDENTS

Carswell Air Force Base Hospital

8. ADDITIONAL FACILITIES SUCH AS JANITORIAL SERVICE, CLERICAL SERVICE, AND ANY OTHERS, AS SPECIFIED BELOW

Janitorial service will be provided in all areas

9. Plan of campus, showing relative location of institution to be provided for the Army ROTC Program (Attach additional sheet).

AN ORIGINAL AND FIVE (5) COPIES OF THE APPLICATION AND AGREEMENT FOR ESTABLISHMENT OF ARMY ROTC UNIT WILL BE MADE. ONE (1) COPY WILL BE KEPT BY THE INSTITUTION AND THE ORIGINAL AND FOUR (4) WILL BE FORWARDED AS FOLLOWS:

1. To The Commanding General, First U.S. Army, Governors Island, New York, N. Y. 10004, from those located in:
CONN MASS N. J. R. I.
MAINE N. H. N. Y. VT

2. To The Commanding General, Second U.S. Army, Fort George G. Meade, Maryland 20755, from those located in:
DEL KY OHIO VA
D. C. MD PA W. VA

3. To The Commanding General, Third U.S. Army, Fort McPherson, Ga 30330, from those located in:
ALA GA N. C. TENN
FLA MISS S. C.

4. To The Commanding General, Fourth U.S. Army, Fort Sam Houston, Texas 78234, from those located in:
ARK LA N. M. OKLA TEXAS

5. To The Commanding General, Fifth U.S. Army, 1660 East Hyde Park Blvd, Chicago, Illinois 60615, from those located in:
COLO IOWA MINN N. DAK WYO
ILL. KANS MO S. DAK
IND MICH NEBR WIS

6. To The Commanding General, Sixth U.S. Army, Presidio of San Francisco, California 94129, from those located in:
ARIZ IDAHO NEV UTAH
CALIF MONT OREG WASH

0000003

5

A. DATA PERTAINING TO INSTITUTION

NAME OF INSTITUTION	COMPLETE MAILING ADDRESS
Texas Christian University	University Drive Fort Worth, Texas 76129

1. IF ARMY ROTC TRAINING IS TO BE CONDUCTED AT ANY AUXILIARY OR SUB-CAMPUS OR AT ANY LOCATION OTHER THAN THAT STATED ABOVE, EXPLAIN FULLY:

None

2. TYPE OF INSTITUTION (Check appropriate box)

☐ STATE COLLEGE (Land-Grant) ☐ STATE (Other) ☐ MUNICIPAL
☐ STATE UNIVERSITY (Land-Grant) ☐ STATE UNIVERSITY (Non-Land-Grant) ☐ OTHER PUBLIC
☒ DENOMINATIONAL (Specify) Christian Churches (Church-related) (Disciples of Christ) ☐ OTHER (Specify) _____

3. LIST AGENCIES WHICH ACCREDIT THE VARIOUS COURSES GIVEN BY INSTITUTION

a. REGIONAL Southern Association of Colleges and schools

b. PROFESSIONAL Texas Education Agency, American Association of Collegiate Schools of Business, American Chemical Society, National League of Nursing, National Council for Accreditation of Teacher Education, National Association of Schools of Music, American Association of Theological Schools.

4a. OFFICIAL DESIGNATION OF GOVERNING BODY	5. NO. OF MEMBERS	6. OFFICIAL DESIGNATION OF HEAD OF INSTITUTION
Board of Trustees	42	Chancellor

7. ANNUAL RATE (Based on 2 semesters or 3 quarters) OF TUITION AND GENERAL FEES FOR BOTH RESIDENT AND NON-RESIDENT STUDENTS: $764.00 for resident and non-resident (tuition figured at $25.00/sem hr)

8. THIS INSTITUTION ☐ HAS ☒ DOES NOT HAVE A COOPERATIVE "BINARY" ARRANGEMENT WHEREBY AT THE END OF THE JUNIOR YEAR STUDENTS TRANSFER TO ANOTHER INSTITUTION AT WHICH, AFTER AN ADDITIONAL TWO YEARS' WORK THEY RECEIVE A DEGREE. INDICATE NAMES OF INSTITUTIONS WITH WHICH THIS ARRANGEMENT EXISTS:

9. THIS INSTITUTION OPERATES ON A ☒ NORMAL ☐ ACCELERATED SCHEDULE. THE ACADEMIC YEAR CONSISTS OF ☒ 2 SEMESTERS ☐ 3 QUARTERS ☐ OTHER (Specify) _____ THERE ☒ IS ☐ IS NOT A SUMMER SESSION. THE TOTAL DURATION OF THE ACADEMIC YEAR, EXCLUSIVE OF VACATION PERIODS AND EXAMINATIONS, IS 42 WEEKS

10. THIS INSTITUTION CONFERS EARNED DEGREES AS FOLLOWS: (Place an "X" in proper column)

	BACHELOR'S	MASTER'S	DOCTOR'S
ARTS AND SCIENCES	X	X	X
ENGINEERING			
BUSINESS ADMINISTRATION	X	X	
EDUCATION	X	X	
Nursing	X		
Fine Arts	X	X	
Theology	X		

10. SPECIFY THE TYPE OR TYPES OF SCREENING OR COLLEGE APTITUDE TESTS ADMINISTERED TO ALL ENTERING FRESHMEN

Scholastic Aptitude Test: College Entrance Examination Board

11. EXTENT TO WHICH ALL ENTERING MALE FRESHMEN ARE PHYSICALLY EXAMINED

All students living in dormitories must present evidence of satisfactory medical examination

12. THIS INSTITUTION PARTICIPATED IN THE FOLLOWING ☒ ARMY ☐ ARMY AIR FORCES ☐ NAVY ☐ OTHER (Specify)

Marine (Air Corps) TRAINING PROGRAMS DURING WORLD WAR II:
Civil Aeronautics Authority
Engineer, Science, Management, Defense Training (civilian)

13. INDICATE THE STATUS TO BE ACCORDED THE ARMY ROTC UNIT WITHIN THE INSTITUTIONAL ORGANIZATION (school, department, etc.) Department

14. IS IT CONTEMPLATED THAT A BAND WILL BE AVAILABLE FOR ROTC CEREMONIES? ☒ YES ☐ NO (State whether institutional or ROTC). ROTC Band

15. MALE ENROLLMENT (Include only full-time, regular, undergraduate, day students.) (Fall 1990)

TOTAL MALE ENROLLMENT	FRESHMAN ENROLLMENT	SOPHOMORE ENROLLMENT	JUNIOR ENROLLMENT	SENIOR ENROLLMENT
1921	542	454	433	492

16. REMARKS

The facilities listed on page 2 of this contract are the same as have been in use by ROTC programs in recent years at TCU.

0000004

6

ATIT-ROTC (21 Jun 65) 1st Ind
SUBJECT: Compliance with DOD Directive 1215.3, February 12, 1965, and DOD Directive 5500.11, December 28, 1964

Headquarters, United States Continental Army Command, Fort Monroe, Virginia 23351, 24 JUN 1965

TO: Commanding General, Fourth United States Army, Fort Sam Houston, Texas 78234

J. K. S.

2 Incl
wd quad cy

AKARF-R (21 Jun 65) 2d Ind

HQ FOURTH US ARMY, Fort Sam Houston, Texas 78234

TO: Professor of Military Science, US Army Instructor Unit (ROTC), Texas Christian University

C C G

1 Incl
wd Incl 2
wd trip cy Incl 1

AKARF-

16

ROTC Unit

Releasing Officer:

10

2

MAJ MILLER/mm/2841

0000005

7

AMENDMENT TO APPLICATION AND AGREEMENT FOR ESTABLISHMENT OF ARMY RESERVE OFFICERS' TRAINING CORPS UNIT
(AR 145-310)

Form Approved Budget Bureau Number 10-R343.3

SUBJECT: Amendment to Agreement for Establishment of Army Reserve Officers' Training Corps Unit

THRU: (1) Commanding General, Fourth United States Army, Fort Sam Houston, Texas
(2) Commanding General, U. S. Continental Army Command, Fort Monroe, Virginia

TO: The Adjutant General, Department of the Army, Washington 25, D. C.

1. In consideration of the establishment and maintenance of the Reserve Officers' Training Corps unit at Texas Christian University (Name of institution) pursuant to the application and agreement (DA Form 918) accepted and approved by Texas Christian University (Name of institution) on 26 February 1965 (Date), and by the Secretary of the Army on 3 March 1965 (Date), it is hereby agreed between the parties to the within agreement that paragraph 3 of the mentioned application and agreement (DA Form 918) is amended as follows:

e. (Added) That no Reserve Officers' Training Corps unit of any type will be established or maintained at an educational institution which discriminates with respect to admission or subsequent treatment of students on the basis of race, color or national origin. Any institution so discriminating which now has a Reserve Officers' Training Corps unit shall be notified that commencing with the next school year no new inputs will be made and the unit will be disestablished as the remaining classes complete the program.

(1) By executing this amendment the officials affirm that this institution is operated under nondiscriminatory principles concerning enrollment and subsequent treatment of students on the basis of race, color or national origin.

(2) This amendment is given for the purpose of maintaining the Army Reserve Officers' Training Corps unit operated at this institution, which involves the expenditure of Federal funds.

2. It is further agreed that upon accomplishment, this amendment of paragraph 3 becomes a part of the original agreement.

FOR THE INSTITUTION

TYPED NAME AND TITLE	SIGNATURE	DATE
J. M. MOUAT Executive Vice Chancellor		24 May 1965
NAME OF INSTITUTION: Texas Christian University	LOCATION: Fort Worth, Texas 76129	

FOR THE SECRETARY OF THE ARMY

TYPED NAME AND TITLE	SIGNATURE	DATE
J. DOUGLAS POTTER, LT COL, AGC ADJUTANT GENERAL		21 June 1965

DA FORM 1 SEP 62 918b Inclosure No. 1-3

0000006

8

SUPPLEMENT TO AGREEMENT FOR ESTABLISHMENT AND MAINTENANCE OF AN ARMY SENIOR RESERVE OFFICERS' TRAINING CORPS UNIT

For use of this form, see AR 145-1; the proponent agency is MILPERCEN.

SUBJECT: Supplement to Agreement for Establishment and Maintenance of an Army Senior Reserve Officers' Training Corps Unit.

THRU: (1) Commander, US Army Third ROTC Region, Fort Riley, KS 66442
(2) Commander, US Army Training and Doctrine Command (ATRO), Ft Monroe, VA 23651

TO: HQDA (DAPE-MPO), WASH DC 20310

AGREEMENT

1. Contingent upon the acceptance of this supplemental Agreement by the Vice Chancellor (President, or other) of Texas Christian University (Name of Institution) and upon the fulfillment of all conditions enumerated in paragraph 2, following, the Secretary of the Army agrees as follows:

a. To relieve this institution of the accountability and of the responsibility for United States property provided for the Army ROTC program upon completion of a satisfactory inventory and accounting.

b. To appoint an active duty officer or civilian employee of the United States Army assigned to duty at the institution as the Army ROTC Property Officer who will be empowered to requisition, receive, store, and account for Army property and otherwise to transact matters pertaining thereto for and in behalf of the United States Army.

c. To relieve this institution of the necessity to comply with the provisions of paragraphs 2f and 2g of the existing "Agreement for Establishment and Maintenance of an Army Senior Reserve Officers' Training Corps Unit" during such period as this institution faithfully complies with the provisions of paragraphs 2a, b, c, d, and e of this supplemental Agreement.

d. That the provisions of 2h of the existing "Agreement for Establishment and Maintenance of an Army Senior Reserve Officers' Training Corps Unit" with respect to requiring a bond, shall not be applicable, so long as the institution is relieved of the accountability and responsibility for United States property provided for the Army ROTC program.

e. To return to the institution the accountability and responsibility for the issue, care, use, safekeeping, and accounting for United States property used and required in the Army ROTC program should the institution so request this action in writing.

2. Contingent upon the acceptance of this supplemental Agreement and upon the acceptance of the responsibility for all United States property by the United States Army, the governing Authorities of this institution agree as follows:

a. To provide without expense to the United States Army, adequate storage and issue facilities for all United States property provided for the Army ROTC program. Adequate facilities will consist of safe, well lighted, dry, heated, ventilated areas, provided with office space, shelving, bins, clothing racks, and cabinets, as required, and suitable storage space for arms and ammunition. All windows will be securely barred or provided with heavy mesh screen, and doors will be reinforced and fitted with cylinder locks. It is agreed that such facilities will be separate and apart from those occupied by any other department of the institution or other Government agency. Determination as to adequacy, safety and satisfactory nature of such storage and issue facilities shall be at the discretion of the ROTC Region Commander.

b. To transfer the responsibility for the issue, care, use, and accounting for all United States property provided for the Army ROTC program to the properly appointed Property Officer of the United States Army.

c. That all shortages of property or discrepancies existing in the property account at the time of transfer will be adjusted by the institution in accordance with established procedures.

d. To take all reasonable measures within the power of the institution to recover Government property which is improperly in the hands of students or former students, which may include withholding transcripts of grades and/or certificate of graduation upon request of the Professor of Military Science.

e. To resume accountability and responsibility for United States property provided for the Army ROTC program and to resume compliance with the provisions of paragraphs 2f, g, and h of the existing "Agreement for Establishment and Maintenance of an Army Senior Reserve Officers' Training Corps Unit" in the event the Region Commander informs this institution in writing that the provisions of paragraphs 2a, b, c, and d of this supplemental Agreement are not being satisfactorily fulfilled by this institution.

3. It is mutually understood and agreed as follows:

a. Agreement will be attached to and become a part of the existing "Agreement for Establishment and Maintenance of an Army Senior Reserve Officers' Training Corps Unit" entered into between the institution and the Secretary of the Army.

b. That this Agreement may be terminated upon the giving of at least 90 days advance notice of such intent by either party hereto.

c. That the United States Army will not be responsible for acts performed by the Military Property Custodian with respect to Army property matters prior to the date of the transfer of property responsibility.

FOR THE INSTITUTION

TYPED NAME AND TITLE	SIGNATURE	DATE
WILLIAM H. KOEHLER Vice Chancellor for Academic Affairs		8 April 1981

FOR THE SECRETARY OF THE ARMY

TYPED NAME AND TITLE	SIGNATURE	DATE
ERNEST L. ISAELL LTC, GS CHIEF, PROCUREMENT AND ACCESSIONS BR		7 JUL 1981

DA FORM 9184 EDITION OF 1 JAN 73 IS OBSOLETE. Pin: U.S. Government Printing Office: 1980-630-015/8131

0000001

PHIL GRAMM
TEXAS

United States Senate

WASHINGTON, D.C. 20510-4302

March 23, 1999

Mr. James D. Boswell
414 Morrison Drive
Euless, Texas 76309

Dear Mr. Boswell:

Thank you for your letter expressing your desire to testify before the Senate Armed Services Committee regarding whistle blowing in the military. I appreciate having the benefit of your views on this important matter.

Unfortunately, I do not sit on the Senate Committee on Armed Services. However, I have forwarded your correspondence to the current Chairman, Senator John Warner. You may also wish to contact the committee directly. Their mailing address is:

Senate Armed Services Committee
228 Russell Senate Office Building
Washington, DC 20510

I appreciate having the opportunity to represent you in the United States Senate. Thank you taking the time to contact me.

Your respectfully,

Phil Gramm

PHIL GRAMM
United States Senator

PG:jwt

CC: Senator John Warner

[redacted]00

James G. Bright
ACofS G3/PTM
III Corps and Fort Hood
Fort Hood Texas 76544
8 March 1999

Assistant Secretary of Army
Manpower and Reserve Affairs
111 Army Pentagon, Washington D.C. 20310-0111

Subject: Reopen case Docket # AC 95-08841: Army Board for Correcting Military Records, Army Officer Major James Boswell

Dear Honorable Sara Lister:

I hope this letter will correct an injustice. It is on behalf of James Boswell who received retirement orders December 17 1998.

By way of introduction, I'm LTC James G. Bright, Texas Army National Guardsman, Title 10 AGR. Some few years' back, I was assigned as the executive officer for MG Jack D'Araujo, the Director of the Army National Guard and had the distinct pleasure on occasion to interface with you on Army issues. I recently declined acceptance for Battalion Command and I regret, even though I was under orders, that I was a participant in the University's and Army conspiracy to remove this outstanding officer from an ROTC assignment and from active duty. After learning the truth, I am committed to just and positive action.

My first AGR assignment was as an Associate Professor of Military Science, Texas Christian University. In the fall of 1986 Major Boswell and I were colleagues. I witnessed a gross injustice perpetrated against Major Boswell and his family. My Professor of Military Science, the Dean for Army ROTC Affairs, and former commander of Major Boswell conspired with an intent to harm Major Boswell. Major Boswell shows evidence of perjury and reprisal from his TCU and former commander concerning their testimony at the Army's retention hearing. Due to conduct unbecoming of an officer, issues as an adulterous affair, there is ample motive why the conspirators wished harm on Major Boswell. Truth may have ended the University and military official's careers.

It is my testimony that Major Boswell's due process was violated and Army and Texas Christian University officials failed in their assessment and proceeded to hastily cover-up the situation. Major Boswell, tenaciously, reported violations of military and university policy dealing with sexual harassment and misconduct, discrimination concerning minority students and cadre, and misapplication of fiduciary property.

Major Boswell epitomized character, moral courage and dedication. An Army Inspector General and a DOD Whistle Blower Report reflect that Major Boswell addressed violations to the University and Army violations. Major Boswell, in fact, confided with me before reporting the offenses. He swore a solemn oath to support and defend the constitution. When the chips were down, the University and Army Chain of Command appeared to ignore compliance with law. Major Boswell was the only one of courage to do his duty at great expense to his career and to his family. Now, twelve years later, partial justice prevails with the Army's Chief, Appeals and Correction Branch letter of notification, subject ABCMR Proceedings, dated December 14, 1998.

I submit to you that Major Boswell's retirement has been miscalculated: In equity, he deserves direct promotion and retirement at minimum in the grade of O-5 (Lieutenant Colonel). Major Boswell's attorney, via letter to the ABCMR, reveals the correction is shallow. Removing one report card fails to compensate for lost opportunity, schooling, awards and damages. In Major Boswell's case, it is impossible for a special promotion board to do justice based on the record.

Now, I firmly believe there is a criminal connection between three events: (1) Reprisal - a black Sergeant Major's removal from TCU (2) Major Boswell's tragedy and(3)the sudden and unexpected disappearance from TCU of a black supply sergeant. He had completed an approximate eighteen years of military service.

It is significant that the former Chairman of the United States Senate and Committee on Armed Services writes the ABCMR requesting "careful review and serious consideration in light of strong public policy" and that several General Officers recommended Major Boswell be promoted. Meanwhile while soldiers make sacrifice, TCU reveals, through discovery, that the University is enriched through federal funds of an estimated six million dollars per year. Please review the enclosures and reopen this case. Thank you for your consideration.

Sincerely,

James G. Bright
Lieutenant Colonel, Infantry
Chief of Training

11 enclosures
cf: Senators Kay Hutchison and Phil Gramm

DON DEARL EZELL
ALUMNUS, TEXAS CHRISTIAN UNIVERSITY
6309 S. HULEN
FT. WORTH TX 76115

August 27, 1998

CHAIRMAN & MEMBERS OF THE BOARD OF TRUSTEES
Texas Christian University, Ft. Worth Texas 76129

At the request of former TCU faculty member and graduate student, Mr. James D. Boswell, I have thoroughly interviewed Mr. Boswell and examined a chain of unfortunate events which occurred at Texas Christian University. These events happened while Major Boswell was assigned as an Associate Professor of Military Science in the Army ROTC program at Texas Christian University. My curiosity and interest for fairness and justice for students and faculty, past, present and future, prompted several weeks of intense study, thus far at no expense. I have assessed and evaluated what I know to be a complete record of Mr. Boswell's case file. As member of the Addison Randolph Clark Society and in the interest of the integrity of our institution, I urge each member to consider my testimony concerning a very complex and difficult decision and conclusion involving an injustice which should be corrected and adjudicated favorably in Mr. Boswell's behalf.

The forgoing information is provided, only, to validate my competency as an ombudsman. A summary of my background includes: Retired Colonel with an active duty retirement from the United States Marine Corps; Attended Texas Christian University on a football scholarship, a letterman, earning a BS and Ed M degrees; Served as a Professor of Naval Science at Duke University; Coached football and taught high school; Served in the Directorate of Public Affairs, Secretary of Defense; Survived three tours in Vietnam; Commanded two Marine Regiments, the 11th Marine Regiment and 13th Marine Regiment; Authorized to wear 27 decorations with seven battle stars; Personal awards include the Legion of Merit, Bronze Star, Meritorious Service Medal, Naval Commendation Medal, Purple Heart, and two RVN Crosses of Gallantry.

Research included study of court documents currently on file in the Northern District Federal Court, Texas as of August 20, 1998, a DOD

military whistle blower reprisal investigation dated July 1995, the Army conclusion that Mr. Boswell's discharge from the Army is declared null and void dated May 1997, comparison of Mr. Boswell's case to other whistle blower cases, detailed analysis of literature concerning articles, government documents and reports, and consideration of numerous statements prepared by a variety of distinguished citizens, and recommendations from three General Officers and thirteen Colonels which categorically and emphatically, recommend Major Boswell for retention and promotion to Lieutenant Colonel.

I am prepared to join others in articulation of expert testimony. My distinct and affirmed conclusion is that Mr. James Boswell reported several actions of impropriety by the Professor of Military Science at TCU in 1986. He subsequently was wronged and harmed by the institutions of Texas Christian University and the United States Army. I recommend that Texas Christian University recognize and bear responsibility for these wrongful actions and bring this case to a satisfactory closure. I contend that there is not a more honorable and qualified leader, today, to command or train our sons and daughters for the next conflict, than Mr. James D. Boswell. Mr. Boswell is a graduate from the University of Texas, Austin (BS ED) and from the University of North Texas (Masters in Public Administration). I think we should be honored to have this courageous soldier return to TCU as an Army Lieutenant Colonel. Former Major Boswell served our country faithfully under the most difficult circumstances. In spite of institutional reprisal, Mr. Boswell continued to serve the military, with reduced rank and income, as a Sergeant in the Texas National Guard. His actions exemplify outstanding patriotism.

Respectively,

Don D. Ezell

DON DEARL EZELL
COLONEL USMC (ret)

cf:
Members, TCU Board of Trustees
TCU General Council
Chancellor, Texas Christian University

31 March 1997

MEMORANDUM FOR President, US Army Board For Correction of Military Records (ABCMR)

SUBJECT: Statement In Lieu of Personal Testimony Before the ABCMR

It is an honor for the opportunity to provide a personal testimonial on behalf of former (Major) Mr. James D. Boswell, 459-92-2709.

If I were present before the board I would testify as follows:

a. Many years have passed since I personally have seen Mr. Boswell or his case. However, upon seeing him eleven years later in January 1997, on a visit to the 49th Armor USARNG, Fort Worth, Texas, I immediately recalled his name, and the extreme nature of the situation surrounding our first meeting. I was appalled that he was still fighting a case which I had briefly become familiar. What impressed me was the fact that (now) Sergeant (E-5) Boswell had persisted for over eleven years in seeking justice for a serious wrong involving his candid reporting of alleged sexual improprieties between college cadets and a senior ROTC official.

b. While serving as Assisting Inspector General (IG), III Armored Corps, Fort Hood, Texas, I had the opportunity to be the first IG to speak with then MAJ Boswell. I conducted a brief inquiry into his visit to the IG. After approximately fifteen minutes of carefully listening to the nature of MAJ Boswell's allegations, I escorted him to The Corps IG, Colonel Nick Turchiano. I perceived MAJ Boswell's initial allegations to be credible. I quickly concluded that the nature of his story had the appearance of a serious abuse of command authority, possible disregard for fraternization with college cadets by senior ROTC cadre, and the potential for further investigation. I felt that the officer was serious, demonstrated candor, possessed moral character, and demonstrated a professional attitude. The officer's case was referred to the 2nd Armored Division Inspector General for disposition, as was IG policy, since he was a member of that major command.

c. In my present position as Director of a Junior ROTC program in a large metropolitan school district, having served as a college ROTC Assistant Professor of Military Science Instructor, and having received my commission through ROTC, I feel qualified to assess the character of military professionals which are essential to develop future leaders of our great country. Former Major James D. Boswell continues to demonstrate that character.

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BOSWELL (Continued)

d. I have thoroughly examined the evidence contained in Mr. Boswell's petition to the ABCMR, and concur in the findings of LTG (Retired) Robert Wetzel. Mr. Boswell continues to demonstrate the moral courage that was evident in my first impression of him and my brief assessment of his case. Rarely will the services find a more patriotic and courageous soldier. It is my belief that MAJ Boswell's discharge was not in the best interest of the US Army or the officer.

Strongly recommend removal of the two derogatory OER's from his official record, reinstatement onto active duty with rank, and compensation.

Truly,

LUTHER W. BERRY
LTC, USA Retired

BOYD FANT
6312 Friar Court
Fort Worth, Texas 76119

Memorandum in support of testimony before a Federal Judicial, Army, or Texas Christian University hearing in behalf of Army Major James D. Boswell (retired)

I, Boyd Fant provide this sworn affidavit under penalty of perjury in support of Major James D. Boswell (retired). I hope this testimony will correct a gross injustice and serve as an incentive to renew the contract agreements of every ROTC program in the country. I am prepared to testify in a Federal Court of Law and before a Congressional hearing, Texas Christian University or Department of Army Agency Board, and before the University's Board of Trustees. Retaliation for reporting protected disclosures to an Inspector General is a protected activity and against the law. As long as the University is in receipt of federal funds, racial and sexual discrimination is against the law. I firmly believe that the United States Army and Texas Christian University were negligent and committed harmful employment actions. The University has projected an attitude that they can fire a person according to discovery documents TCU admission mailed to Major Boswell December 3 1998. Admission Number 18 reads "Defendants were not required to have legal justification or excuse to request Plaintiff's reassignment from TCU."

I am a retired Sergeant Major with 26 years of honorable active service. My race is Afro-American. I served in the Texas Christian University ROTC program from June of 1983 through January 1986. I have thoroughly examined the events which occurred at TCU in 1986 and 1987 and the contents of the following documents (enclosed):

TCU General Counsel Letter to Major Boswell dated November 18, 1987.
TCU Dean McCracken's Memorandum dated 10 February 1987.
Texas Christian University's Letter to ROTC Cadets, dated 23 December 1986.
Check made out to Texas Christian University for $ 2635. Dated 26 April 1985.
TCU Admissions dated 3 December 1998.

Major Boswell's experience concerning TCU's unlawful employment actions and removal from an ROTC assignment are closely related to mine. I also was terminated from TCU involuntarily, one year before Major Boswell. I challenged the management of the ROTC program and what I believed to be unlawful conduct. I was not comfortable with the leadership, misconduct, and mismanagement of the program. I, like Major Boswell, was discharged unjustly.

When I heard about Major Boswell's wrongful discharge I was pleased to testify on his behalf. I knew deep down that Major Boswell was an honorable man and was courageous and that when he challenged the officials of the University or the ROTC Professor of Military Science, they would find a way to get rid of him and fabricate charges if necessary. I provided the Army investigating officer testimony on or about 18 December 1986 as follows:

> **"It sounds like he was being railroaded like I was"**
> **"Lieutenant Colonel Stacy is prejudice, non-professional, and unethical"**
> **"They are picking on him and its not professional"**

I now respond to the allegation of racial discrimination at Texas Christian University in much more detail and to the newly discovered evidence concerning the missing Black soldier from the TCU ROTC cadre. Until Lieutenant Colonel Stacy was assigned to TCU, my experience with racial discrimination was minor. Stacy was abusive and the absolute worse boss I have ever worked for. He humiliated and intimidated me and other Afro American cadets and cadre. At one point, he deprived me of my constitutional rights: He ran me off the University's campus while I was visiting friends. We came close to a physical confrontation. He gave all the actions and attitudes which showed racial prejudice. He almost got my goat.

It appeared as Lieutenant Colonel Stacy hated minorities. I witnessed Lieutenant Colonel Stacy degrade Afro American cadets and cadre and was treated badly in retaliation for objecting to the management practices. At my previous ROTC assignment at the University of Arkansas, I received awards and perfect evaluations. After I left TCU, I received awards and outstanding evaluations. At TCU personnel actions reflected that I was substandard, below average. When you are fired, the organization does not give awards. Your career is over. In short, my assignment at TCU was most unpleasant. No where in the United States Army could a Lieutenant Colonel get away with such reprisal actions. It distresses me that I was forced into involuntary retirement and that my family was subjected to such discriminating treatment.

I felt sorry for all the minorities that was associated with ROTC. Lieutenant Colonel Stacy's actions were extremely prejudicial against Afro-Americans. These actions were inconsistent with the goals of our country and not in compliance with University and Army policy. What happened to Staff Sergeant Dunlap puzzles me. He was an Afro-American. My theory is that Staff Sergeant Dunlap is missing and on the roles as a deserter because he was intimidated, threatened with punishment or court martial. I witnessed that he was a good soldier. He received an award for doing laundry at summer camp. He had 18 years in. It is likely that he was pressured and could not take it any more. He likely was forced in to quitting. I would not be surprised if he is dead and is a victim to a hate crime. Stacy made black soldiers and cadets miserable. Dunlap provided favorable testimony on behalf of Major Boswell. Any black cadre member or cadet who testified for Major Boswell, I am sure went through hell and was retaliated against. Sergeant Dunlap, like Major Boswell and like myself did not have a chance to succeed.

Many students were unfairly treated and they came to me because I was the most senior enlisted soldier in the Army ROTC program. It was my job to listen to student complaints and resolve them. But the cadets largely complained against Lieutenant Colonel Stacy. He was the problem and the University appeared to condone his actions. Cadets despised him. I would rate Lieutenant Colonel Stacy last on the bottom of a one to ten scale compared to all other officers I have served with during my twenty-six years of honorable service.

The major difficulty I had with the Dean and the Colonel was over the misuse of cadet funds. Cadets did not have a voice and the Dean and Stacy used the funds as a slush fund. I felt that the management, approved by the University, was illegal and unethical. Several of the cadets complained and questioned the management of the funds. On several occasions I objected to the improper use and control of the cadet fund as well as other violations of officer integrity. For example, I complained about using the cadet fund for cadre use. I was one of the NCO's who stayed in the hotel at Fort Polk Louisiana. The expenditures were paid out of the cadet fund. I believe the cadet fund should be utilized only for cadet functions, and exclusively for cadets and not for unauthorized expenditures. Cadet Gilbert was one of the cadets who complained about the handling and the misuse of the funds. I feel that University and Army supervisors abused their authority. Likewise, I felt that using the cadets for work detail at the Colonial Professional Golf tournament during final exams was an abuse of commander's authority. Many cadets' grades

suffered. The work requirement was unreasonable and selfish on the part of Dean McCracken and Lieutenant Colonel Stacy. They should not have allowed interference with final exams.

A complainer could not go to the Army Inspector General or to Dean McCracken, without experiencing retaliation. Even when they did, change did not occur. I believe the University was a joint conspirator against Major Boswell. Everything I heard or witnessed about Major Boswell was outstanding. Why didn't the University allow Major Boswell grievance procedures? It is a shame a good officer's career was ruined. He displayed a caring interest for fairness and justice for students and employees. I firmly believe that Major Boswell's removal from ROTC duty, like mine, was totally groundless and unjustified. In reviewing the Dean's memorandum dated December 15 1986, it is obvious Major Boswell cried for help. In reviewing Dean McCracken's memorandum dated 10 February 1987, confirming "I wish to have Major Boswell's assignment discontinued", I firmly believe that a jury consisting of the Fort Worth community will conclude, as I, that Texas Christian University and the United States Army joined to intentionally and recklessly conspire to harm Major Boswell. From my experience with TCU and the Colonel I can only say that the University relieved the wrong man. I admire Major Boswell's moral courage in taking the initiative to correct the situation, something that I feel should have been done long ago. I also strongly disagreed with actions of Lieutenant Stacy of showing favoritism to select cadre and cadets.

As far as the Army investigations, they were bias. The DOD Whistle Blower investigation found reprisal. Army investigations disguised the truth to avoid negligent misconduct, potential media coverage, and damage to the reputation of the University and the Army. Drill sergeants can't have sex with recruits. ROTC instructors can not have sex with cadets. TCU retaliated against Major Boswell because he reported a rape. That is clear by reviewing the TCU memorandums. This tactic was similar to my experience where Lieutenant Colonel Stacy fabricated trivia actions against me. Major Boswell's due process was violated. Any one reviewing the TCU General Counsel Letter to Major Boswell dated November 18, 1987 can see this. It deprives Major Boswell of constitutional rights. Major Boswell and I are Vietnam Era Veterans. How can a University in receipt of federal funds disbar a federal employer from campus as TCU and the Army did to both of us? TCU ordered Major Boswell to not talk to people who were key to his defense. Major Boswell did not have a chance for survival in a corrupt environment. This prompted me to try to help him.

The investigation on Major Boswell was a cover up and I believe that the University was a joint conspirator. The University had ROTC oversight responsibility. The University knew about the slush fund, was a recipient of the money. When Dean McCracken states he found no evidence of misuse after Major Boswell provided the Dean with an audit and copies of the checks, this shows me that he washed his hands and ignored criminal activity. The Dean took a similar approach when responding to ROTC student sexual harassment complaints. When the TCU General Counsel wrote Major Boswell a letter dated November 18, 1987, requesting that he "immediate cease and desist all further communications with TCU, its faculty, administration, students, and board of trustees" that reveals the University's role in the conspiracy and cover up.

It seems that the Dean and the Lieutenant Colonel Stacy were in joint conspiracy to harm this officer. I am not sure about the motive other than to continue their abuse of cadets for personal gain and power. The check made out to TCU for $ 2635 on 26 April 1985 while I was the Sergeant Major may be as good as motive as any. TCU officials benefited from the fund. The cadets were never paid back to my knowledge. Major Boswell's audit shows over $ 14.000 of expendinures. The Dallas ISD superintendent went to prison for a similar offense. Lieutenant

Colonel Stacy instructed his subordinates to spy on me all because I disagreed with his illegal management and racial discrimination. Instructors spied on Major Boswell for the same reason to find something, anything, no matter how trivial, to discredit this officer. That is the reason they detained and escorted this officer to the hospital for pschiatric evaluation. He was accompanied by his twelve year old daughter. Supervisors at Texas Christian University were corrupt. They should be held liable. The University knew about the mismanagement of the ROTC program because cadets said they had confided with the Dean. The Dean definitely knew about the racial difficulty, the fund, the Rape Charge and the adulterous affair before he recommended Major Boswell's dismissal. Major Boswell was wrongfully discredited and defamed by Texas Christian University and Department Army officials. This is obvious in TCU memo to all ROTC cadets dated 23 December 1986. While Lieutenant Colonel Stacy Sergeant Major, I also was discredited simply because I would not condone unethical behavior.

As forstated, I was victimized by the Associate Professor of Military Science in the Army ROTC program and by Texas Christian University. My removal, as Major Boswell, was not because of unprofessionalism, misconduct or substandard performance, but in retaliation for raising discriminating complaints. Army investigations served to protect the Dean and LTC Stacy and to make it look like their actions were legal to get rid of any one who challenged illegal conduct. The investigations were nothing but a tool to obscure violation of state and federal statutes.

My affirmed conclusion is that Mr. James Boswell performed a constitutional duty and he was unnecessarily punished. I hope that Texas Christian University and the United States Army will be accountable for damages. Major Boswell was victim of conspiracy and defamation of character. I hope that a federal judge will see the error in the University and Department of the Army ways. Again, I will be happy to testify before a Board of Officers or a Federal judge. I would like to see Major Boswell receive an award of damages for loss of employment for all those years and for the pain and suffering that his family had to endure.

Respectively,

Boyd Fant

5 enclosures

Subscribed and sworn to before me by said affiant, a notary public in and for Tarrant County, Texas, this 7th day of January 2000.

My commission expires: 9-4-2001

Jack G. Wolfe

Notary Public for the State of Texas
County of Tarrant

JACK G. WOLFE
NOTARY PUBLIC
State of Texas

[redacted]021

AFFIDAVIT

STATE YOUR NAME AND ADDRESS: John Hayhurst, 3000 Harmony, Amarillo Texas 79106.

WHERE ARE YOU EMPLOYED? I served as an officer on active duty until the early 90's. Presently I own and operate KAT Energy Corporation, an Oil and Gas Company.

WHY ARE YOU PROVIDING THIS STATEMENT? I previously prepared a written statement. This testimony reflects my previous statement as well as my memory. I hope my testimony will substantiate the University and the Army's reprisal action, defamation of character against Major James D. Boswell, and justify an award for damages.

HOW DO YOU FEEL ABOUT MAJOR BOSWELL'S DISMISSAL? Very Surprised! Major Boswell was a newly assigned cadre member for the fall semester of 1986 school year. I was a MS III cadet in my junior of college. Cadets respected Major Boswell because he would listen to cadet communications about any thing at any time about stress, personal problems, military bearing, it did not matter. He was well liked, respected by cadets, caring, sensitive and always there for us. I admired his high degree of honesty, loyalty, and integrity. Major Boswell possesses all the traits associated with excellence. He displayed conscientiousness, forthrightness and unfailing moral integrity. He is a proactive self starter and makes appropriate and sound judgements. Major Boswell taught me a lot about military leadership. He was partially responsible for establishing and training TCU's ROTC nationally recognized Ranger Challenge Team. I should know, I was a founding member and participated on two of the nationally recognized teams. I believe that the action taken by the University and LTC Stacy was a grotesque injustice of power perpetrated to defile Major Boswell's professional career and his name.

WHAT WAS LTC STACY'S COMMAND CLIMATE LIKE? Cadets and Cadre alike were subject to LTC Stacy's favoritism. You were either liked and you received all the best offers and schools, or disliked and received disfavor and/or discriminated against. Before I testified on Major Boswell's behalf, I was on the top of LTC Stacy's standing list for schools, cadet positions, and awards. I earned this top standing by graduating in the top five cadets in basic and advance camps. Furthermore, I helped bring national recognition to LTC Stacy's ROTC Department and TCU University as a participant on the elite Ranger Challenge squad. I put myself in a crunch when I did what I knew to be expected and honorable actions in trying to clarify the truth concerning the allegations against Major Boswell. I experienced retaliation, the cold shoulder, and went from the top standing to the bottom. I lost my chance to be selected for Ranger school and was reassigned to work in the supply room. I felt this action by LTC Stacy was a reprisal and punishment directly associated with my intervention into the Army's IG investigation into Major Boswell.

John Hayhurst Testimony is support of Major James Boswell

WHAT ARE YOUR THOUGHTS ON WORKING FOR THE GOLF TOURNAMENT? It conflicted with final exams. My grades were poor. Many cadets did not like being pressured into working for the Colonial's Professional Golf Tournament during final exams. It was a "had to" deal as opposed to a "want to" extra activity. It interfered with our grades and it was physically impossible for some cadets to do both, either make passing grades or work the tournament. Major Boswell earned our respect when he tried to convince LTC Stacy to listen to cadets and allow them to design and execute extracurricular activities conducive to successful recruiting and retention.

WAS THERE ANY EVIDENCE OF RACIAL DISCRIMINATION? I worked closely with Sergeant Dunlap while I served as the Cadet S-4 (supply officer) for TCU's ROTC Battalion. Sergeant Dunlap would often relay his thoughts on LTC Stacy, his command, and his treatment toward black people and black cadre members. Sergeant Dunlap tried to clarify the truthfulness concerning Major Boswell's allegations about the cadet fund, rape incident, and LTC Stacy's discrimination toward black cadres and cadets to IG investigators. LTC Stacy countered by trying to discredit Sergeant Dunlap and get his assignment canceled to TCU. One time after a field exercise in Mineral Wells, LTC Stacy chewed Sergeant Dunlap and me out for no reason. LTC Stacy said clean up operations were not up to his standards. On another occasion, LTC Stacy was down on Sergeant Dunlap for the transportation arrangements for General Thomas to our annual formal banquet. LTC Stacy again said that the transportation arrangements were not to his standards. I believe that LTC Stacy discriminated against Sergeant Dunlap. I think he had some kind of racial hang up about black people, especially for Sergeant Dunlap. Why would a senior sergeant with less than two years from retirement leave, go awol, and never be seen again? It does not make any sense. I feel that LTC Stacy threatened Sergeant Dunlap or gave him an ultimatum which left Sergeant Dunlap no choice but to leave involuntary. I suspect that LTC Stacy and the University wanted to distance themselves from any culpability.

WAS THERE ANY SEXUAL IMPROPRIETY? Many of the cadets had allegations about several cadre members' sexual improprieties. Cadet Jones was rumored to be sleeping with LTC Stacy. Her cadet career was accelerated during her MS III year, jumping over many qualified cadets to become the Cadet Battalion Commander (highest cadet position). The female cadets would always complain about Major Cooper's advances and the content of language used toward them. The female cadets said that these occurrences normally occurred during his one on one counseling session. When Ms Tucker resigned and the allegations of sexual assault surfaced that Sergeant Major Vyers had sexual relations with Cadet Tucker, the intimidating and hostel environment became worse. Any cadet or cadre found helping Major Boswell wound be ostracized and black listed. Cadets were aware that instructors cannot have sex with cadets. Actions at TCU and integrity did not fit. It was a mess.

HOW WAS THE OPERATION OF THE CADET FUND? Cadets complained about the mismanagement of funds, lack say so or voice, and operated against state and federal laws. After the 13 of January 1987 meeting between LTC Stacy and the MS III class, I was appointed to the Cadet Fund Counsel. A Counsel meeting was set for 16 January 1987. We documented complaints

and set up procedures to be compliant with state and federal laws. Through Major Boswell's efforts, the cadets gained control of our money. It was rumored that we had more than $10,000 dollars worth of expenditures from the cadet fund. The actual amount of expenditures was not disclosed to the Cadet Fund Counsel, because we never attended another meeting. I heard that the IG inspected the fund and found no problems.

DID THE INVESTIGATIONS APPEAR TO BE FAIR? During the 13 January, 1987 meeting, LTC Stacy and LTC Hammery wanted to "clear the air on why Major Boswell was relieved of his command." Nothing nice was said about Major Boswell. It made me wonder if they were talking about the same officer. I felt there was some conspiracy going on that was the root cause for Major Boswell being fired and I felt that the University was in on it. LTC Stacy said he talked with Major Boswell's former commander (an officer by the name McCarthy) who said that Major Boswell lost a sensitive document. I had reservations about what they said, and I wished that Major Boswell had been present. They talked about how bad Major Boswell was treating his wife and he was found guilty of such charges as not supervising cadets on a field training exercise (FTX), too much drinking at the Dining Inn, not teaching a Nuclear Biological and Chemical Class (NBC). I was a participant in the FTX. I was present at the Dining Inn and the NBC class. I felt that LTC Stacy fabricated these allegations; furthermore, why would LTC Stacy bring Major Boswell's personal life into these investigations, especially his treatment of his wife and child. I asked LTC Hammery "what type of investigation is this." I made a comment: "There is a problem with the interviews and findings." The cadets were ordered not to talk to Major Boswell about anything. It appeared to me that Major Boswell was being framed. It was a cover and conspiracy by LTC Stacy to show that Major Boswell was in the wrong and he was in the right.

WOULD YOU LIKE TO ADD ANYTHING ELSE TO YOUR STATEMENT? The most embarrassing situation that I remember vividly occurred at Major Boswell's residence in Ben Brook, Texas. I visited Major Boswell. I explained what had occurred and requested that I prepare a statement. I still have a copy of that statement. I explained the event and then I received the surprise of my life. Without telling me, Major Boswell called General Williamson and talked with her on the phone. Then he gave me the phone and told me; "Tell her." I said something to the effect of; "Tell her what?" He said; "Tell her everything. Everything you just told me." She let on that she did not believe my story. I never knew that Lieutenant Colonel Stacy was actually reprimanded for violating Major Boswell's privacy and discussing Major Boswell's alleged marital problems until I read the IG finding. Now I am convinced that the Army and the University officials defamed Major Boswell's character. That explains why Stacy retaliated against me. The reprimand to Stacy for his misconduct caused damage to his career and he punished me just like he punished Dunlap and Major Boswell. I lost the inside tract. I lost all the good deals. My cadet career was tarnished. Now I wonder about my military career and about the projections had the Army and the University confessed and corrected the misconduct.

John Hayhurst Testimony is support of Major James Boswell

WHAT IS THE SITUATION WITH CHANGING CADET'S SEMESTER GRADES? Before Major Boswell was fired, he gave us our semester final grades. After Major Boswell's termination, cadets were given higher grades. I did not make sense. This was a way to keep the cadets calm and to win cadets over. This was cheating, an integrity issue.

WHAT WAS THE UNIVERSITY'S ROLE? Lieutenant Stacy told us that the University had fired Major Boswell and would never let him come back to teach ROTC. We were provided a TCU memorandum that Major Boswell was barred from campus and from contacting TCU cadets. I felt that Lieutenant Colonel Stacy's University supervisor, Dean McCracken, Knew about the slush fund problems, the sexual harassment, the loss of the black cadet and the black cadre member. I would say the University was in a joint conspiracy with the Army in retaliation of Major Boswell going to the IG.

WHY DID YOU LEAVE THE ARMY? A lot of reasons, but mainly I was frustrated with unethical misconduct and unfairness. I saw many people get hurt. I didn't want to spend the rest of my career having to worry about being retaliated against for doing my job. The Army has real problems concerning fairness and abuse of command authority.

ANYTHING ELSE? My room mate, Russell Merchen, has much more information than I. I am prepared to testify in a Federal Court of Law.

DO YOU CERTIFY UNDER THE PENALTY OF PERJURY THAT YOU ARE TELLING THE TRUTH AND THAT THIS IS YOUR STATEMENT AND YOUR SIGNATURE?
I do.

John Hayhurst

Mr. John Hayhurst

Subscribed and sworn to before me, by said affiant, a notary public in and for Potter County, Texas, this 18th day of January 2000.

My Commission Expires:

WILMA HIGGINBOTHAM
MY COMMISSION EXPIRES
September 12, 2002

Wilma Higginbotham

Notary Public for the State of Texas

John Hayhurst Testimony is support of Major James Boswell

NATHAN LYNN
Department of Military Science
Texas Christian University
Fort Worth, Texas 76129

At the request of former TCU faculty member and graduate student. Mr. James D. Boswell, I have thoroughly examined a chain of unfortunate events which occurred at Texas Christian University in 1986 and 1987. I have been the civilian administrative clerk for Army ROTC at Texas Christian University from 1985 to 2000, with a break in service in 1987- 1988. I departed TCU voluntarily, primarily because I was fed up with the management of the ROTC program and the leadership of Lieutenant Colonel Stacy.

I witnessed Lieutenant Colonel Stacy mistreat many students and cadre members while showing favoritism to undeserving. The Lieutenant Colonel was not well liked. He was not reputable, and he was the most racially prejudice officer that I have ever served under. Sergeant First Class Brown and I suspected that Lieutenant Colonel Stacy was having an affair. He was a married man. Cadet rumors were wide spread.

I witnessed several discriminatory actions and felt that they were racially motivated and overt. Lieutenant Colonel Stacy terminated Sergeant Major Fant, unjustly. He made Sergeant Major Fant's assignment miserable. He forced the Sergeant Major into involuntary retirement. SGM Fant was an outstanding black soldier and a real asset to the program. SGM Fant was reassigned to the Dallas Recruiting Team. Lieutenant Colonel Stacy's prejudicial actions against **black sergeants**, Max Brown and John Dunlap, were inconsistent with Army and University policy. Lieutenant Colonel Stacy fought hard to deny Staff Sergeant Dunlap a TCU assignment. Sergeant First Class Brown initiated a complaint against Lieutenant Colonel Stacy to the Army Inspector General. Sergeant Dunlap was intimidated by Lieutenant Colonel Stacy. Sergeant Dunlap disappeared, vanished. One day he was no longer at work. To my knowledge Sergeant Dunlap has never been found. He is classified and carried on the Army roles as a deserter. His truck was left at the home of Major Bright on the last night he was seen. In almost fifteen years, the worse injustice I witnessed was the conspiracy against Major Boswell. Major Boswell impressed me because I liked his leadership style. He displayed a caring interest for fairness and justice for students and faculty, past, present and future. He was respected and rated as our top instructor. I felt the charges against Major Boswell were truncated. This prompted me to assess and evaluate circumstances and on 18 December 1986 I testified on Major Boswell's behalf. Major Boswell was not afforded the due process of Military nor University procedures. Lieutenant Colonel Stacy, Sergeant Major Vyers and a gang of cadets and officers joined to ensure Major Boswell's dismissal. Officer's were required to spy on Major Boswell and discredit him.

I will be extremely pleased if the injustice can be corrected after all these years. The events which happened while Major Boswell was assigned as an Associate Professor of Military Science in the Army ROTC program at Texas Christian University were unfortunate. Major Boswell's supervisor was Lieutenant Colonel Stacy and Lieutenant Colonel Stacy University's supervisor was Dean McCracken. Before Dean McCracken recommended that Major Boswell be fired, Major Boswell reported several incidents to the University and Inspector General authorities. They included racial allegations, an

alleged rape between Sergeant Major Vyers and a cadet student, and irregularity with the ROTC cadet fund. The Sergeant Major was a married man accused of rape and adultery.

I felt that Dean McCracken was steered wrong and was fed incorrect information. I did not understand the University's decision to remove Major Boswell since the Dean was previously upset with Lieutenant Colonel Stacy concerning misuse of the cadet fund. At one point Dean McCracken required Lieutenant Colonel to fully account for cadet fund expenditures concerning an overseas trip.

When I heard that Major Boswell's commission was restored, I was happy. I was glad that a DOD military whistle blower reprisal investigation did some good. The Army's investigation of Major Boswell's conduct was a farce. Lieutenant Colonel's Stacy's friends conducted the investigations. Numerous statements were prepared by cadets but most cadets were influenced by Lieutenant Colonel Stacy and Sergeant Major Vyers. The investigations were tainted to cover up for their own negligent conduct.

My distinct and affirmed conclusion is that Mr. James Boswell reported several actions of impropriety by the Sergeant Major and Professor of Military Science at TCU in 1986. He subsequently was wronged and harmed by the institutions of Texas Christian University and the United States Army. I recommend that Texas Christian University recognize these mistakes and take the lead for correcting this officer's career. I contend that there has not been a finer, more qualified, and more courageous leader to be employed at Texas Christian University then now retired Major James D. Boswell.

Mr. Boswell is a graduate from the University of Texas, Austin (BS ED) and from the University of North Texas (Masters in Public Administration). I know him as a tremendous leader. He was able to relate to cadets more so than other cadre. Major Boswell was totally professional and he possesses military bearing and demeanor. In spite of institutional reprisal and victim of conspiracy, Major Boswell's departure was questioned by many cadets. His actions were exemplary. Major Boswell was very much missed. When the cadets were assembled to discuss the investigative findings against Major Boswell, this was a disgrace.

In the interest of the integrity of our institution, I urge the Department of the Army, Texas Christian University Chancellor and Chairman and Members of the Board of Trustees to consider my testimony, and to rehire this outstanding officer to a civilian position equivalent to that of at least a Lieutenant Colonel. This will be a very complex and difficult decision; however, in equity, Major Boswell sacrificed his career for selfless benefit to students, females and minorities. I would very much like Major Boswell to be awarded damages and if I can testify on Major Boswell's behalf, I will.

Respectively,

Nathan Lynn

Subscribed and sworn to before me by said affiant, a notary public in and for Dallas County, Texas, this 13th day of January 2000.

My commission expires: 4-15-00

Notary Public for the State of Texas
County of Dallas

DOUGL

AFFIDAVIT

STATE YOUR NAME AND ADDRESS. Mr. Koan Bice, 116 Pecan St. Azle Texas 76020

WHERE ARE YOU EMPLOYED? I am employed at the Azle Independent School District. Major Boswell and I were ROTC faculty members of the Army ROTC staff at Texas Christian University. I was not only on the staff but I was also a four-year scholarship cadet. I was asked to stay as faculty after my graduation and commission.

WHY ARE YOU PROVIDING THIS STATEMENT. I witnessed the conditions under which Major Boswell was required to work under. I hope my testimony will substantiate the University and Army reprisal and that my testimony results in an award of damages for injury to Major Boswell.

HOW WAS MAJOR BOSWELL INJURED. Dean McCracken directed that Major Boswell be dismissed. The University did not take Major Boswell's complaints of cadet sexual assault, racial discrimination, and misapplication of cadet funds seriously. The University ignored Major Boswell's grievance request and denied Major Boswell a hearing and due process. The Dean accepted feedback on Major Boswell without allowing Major Boswell the opportunity to review statements which were false. The Dean and Lieutenant Colonel Stacy conspired to remove Major Boswell because Major Boswell suspected and concluded that they were negligent in the control of cadet funds, indifferent to racial discrimination, and had more interest in covering up an alleged rape committed by a TCU faculty member. The cadet victims polygraph examination and statement clearly shows irrefutable evidence that the faculty member has sexual intercourse with the student, an act in violation of the Uniform Military Code of Justice. Personnel who commit adultery and engage in sexual misconduct are subject to court martial. The University interest appeared to be in favor of obstruction to justice. Considering Major Boswell's strong military back ground, this was an injustice. I can testify to Major Boswell's character, instructor standing, his duties and responsibilities, and to the conspiracy and resulting hostile environment from the sexual misconduct. Major Boswell was respected and was very well liked. He was a fantastic mentor. He was unselfish and helped me prepare for the Officer's Basic Course.

He came to my aid when I became involved in controversy at Fort Carson Colorado. He taught me some things about leadership that appeared to be foreign to other instructors. He demonstrated courage. candor and commitment.

WHAT ARE YOUR THOUGHTS ON WORKING FOR THE GOLF TOURNAMENT? It benefited the University and ROTC faculty at the expense of cadets.

WAS THERE ANY SEXUAL IMPROPRIETY. Yes. Major Cooper was accused of sexual harassment he was such a prick, no back bone. Lieutenant Colonel Stacy lacked integrity and he was suspected of sexual misconduct and showing favoritism to some of the attractive cadets. Sergeant Major was accused of sexual assault. In the report of the Army Inspector General Investigation, it refers to the fact that the Sergeant Major denied the offense. Testimony provided by the Sergeant Major alibis created doubt, doubt that now is cleared up by the admission of those involved in the conspiracy. Major Boswell took the brunt. He was the Whistle Blower and suffered the consequences. It is common knowledge that instructors can not have sex with cadets. The army has no tolerance for adultery and for Drill Sergeants and ROTC Instructors poking recruits and cadets. It is admirable that Major Boswell took a stand on these issues.

HOW WAS THE CADET FUND RUN? The fund was not in compliance with Army or University policy.

WOULD YOU CARE TO COMMENT ON THIS TCU MEMO. DEAN MCCRACKEN SATES HE INSPECTED THE FUND AND FOUND NO MISUSE. The management benefited from the use of the slush fund. Management failed to apply the leadership and budget for necessary operating University and Military expenditures. Management took what ever they needed out of cadet money. Cadets had no voice. $ 14,000 is a lot of money. In reviewing Texas Law on fiduciary responsibility, I would say the supervisors are guilty of a felony just like the conviction of the Dallas ISD superintendent. It bothers me that Dean McCracken sends a TCU memo directing the removal, after Major Boswell provided him with an audit of expenditures (15 December 1986) totaling over $ 10,000. The next day, 16 December, cadets had their very first counsel meeting. Let's be realistic the University initiated dismissal action on 22 December 1986 four days after

Major Boswell reports a rape and suspects the Dean and Stacy of misuse of the cadet fund. If they were not guilty of something why did they deny Major Boswell opportunity to present evidence in an objective forum.
WHY ARE YOU JUST NOW PROVIDING YOUR TESTIMONY? WHY DIDN'T YOU SAY THIS IN 1986. After I read Major Bright's testimony "I regret, even though under orders, that I was a participant in the University's and Army conspiracy to remove this outstanding officer from an ROTC assignment and active duty", I felt an obligation to help Major Boswell regain his status, especially since cadre members were ordered not to help him. I believe an appropriate remedy is a TCU damage award.
WAS THERE ANY EVIDENCE OF RACIAL DISCRIMINATION. Yes. A cadet complained to Major Boswell that an instructor used disrespectfully the word "nigger". Lieutenant Colonel Stacy treatment of black people was prejudicial. This was one of Major Boswell's protected disclosures to the Inspector General. It was unlawful for TCU to fire Major Boswell. As Major Bright alludes to in his statement, he suspect Lieutenant Colonel Stacy's involvement in the sudden disappearance of black supply Sergeant Dunlap. He was two years short of drawing a pension. I worked closely with Dunlap so I had inside information. According to the IG report, Stacy was accused of trying to get Dunlap assignment to TCU canceled. He made this soldiers' life miserable. Major Boswell had the courage and the intestinal fortitude to go to the IG about the blacks being mistreated, the fund, and the rape. The fact that Major Boswell was "railroded" is corroborated by black Sergeant Major Boyd Font during the cover up Army investigation. Charges against Major Boswell were bogus. This was an abuse of command.
DID THE INVESTIGATIONS APPEAR TO BE FAIR? No. I read extracts of the reports. They were used as a tool to close out a case. Major Boswell was defenseless in a corrupt environment. When I heard what the University did to Major Boswell to discredit him, when the students were given a one sided version of what happened, I became angry. But like any new Army Lieutenant in controversy with a boss, it was implied to me that it would be in my best interest to steer clear of Major Boswell. I believe the Army Investigators were in on the conspiracy. These examples of lack of integrity haunted me while I served as a United States Army junior officer.

WOULD YOU LIKE TO ADD ANY THING ELSE TO YOUR STATEMENT? Yes. As a cadet and junior officer you are very impressionable. You try to pick up from your superiors the difference between right and wrong, between weak and strong, between honorable and

corrupt. University's and ROTC programs have a public service duty to entrench, mold, and enforce values and build character in our countries leaders. Otherwise, students become a liability to society verses an asset. I can honestly say that Major Boswell's experience is eye opening. Perhaps through it, our nation can learn some important lessons.

WHAT IS THE SITUATION WITH CHANGING CADET'S SEMESTER GRADES? It was an integrity violation against all principles of leadership. It was fraud and cheating. I believe the grades were changed to discredit Major Boswell and give credibility to his replacement.

WHAT WAS THE UNIVERSITY'S ROLE? I believe the people in leadership positions were trying to cover their own asses. The University was in receipt of federal funs. It was a considerable risk to lose them. Barring Major Boswell from campus and from contacting TCU leadership, trustees, faculty and cadets was a conscious TCU General Counsel decision. The University knew about the slush fund problems, the sexual harassment, the loss and mistreatment of the Afro American race. The University was in joint conspiracy with the Army in retaliation for Major Boswell going to the IG. They did not expect that some day this would back fire on them.

WHY DID YOU LEAVE THE ARMY. After I graduated from TCU, I received my commission and entered service. I made mistakes as a junior officer that I was unable to recover from.

ANYTHING ELSE. I am prepared to testify in a Federal Court of Law.

DO YOU CERTIFY UNDER THE PENALTY OF PERJURY THAT YOU ARE TELLING THE TRUTH AND THAT THIS IS YOUR STATEMENT, AND YOUR SIGNATURE. I do.

Mr. Koan Bice

Subscribed and sworn to before me by said affiant, a notary public in and for Tarrant County, Texas, this 9th day of January 2000.

My commission expires:

JACK G. WOLFE
NOTARY PUBLIC
State of Texas
Comm. Exp. 09-04-2001

Notary Public for the State of Texas
County of Tarrant

Memorandum for a Federal Court and the Department of the Army:

This statement is on the behalf of my father, former Army Major James Douglas Boswell in support of an appeal to the Secretary of the Army and in support of Federal Litigation. I provide this statement with the help of a previous statement. I provide it now in response to newly discovered evidence of a conspiracy. The discovery came after District Court proceedings. I now have factual evidence that Texas Christian University and Department of Army joined in conspiracy to harm our family. I can see the connection between the unjustifiable removal of a former Black Senior ROTC faculty member, removal of my dad, and sudden disappearance of a Texas Christian University black staff member. These events and the sworn affidavit concerning an Army Colonel's death threat frighten me and should shock the conscious of the court. I encourage Congressional, Public, and State and Federal intervention. I trust that my statement will support justification for damages. I am prepared to testify before a judicial or administrative proceedings. As I review extracts from the Department of Defense Army Whistle Investigation, my dad lawfully reported protected disclosures to the Inspector General and University Authorities, yet he experienced reprisal and has not been made whole again.

I was a young girl (approximately 12 years old) but I still remember one of the most upsetting and confusing days of my life. It was the date that my father was relieved from his position as a ROTC instructor at Texas Christian University. I vividly remember that day as if it were yesterday. I was at the Library because my father was in a meeting that morning. I was spending the Christmas holidays with him in Fort Worth. At a very young age I was encouraged to take an active interest in ROTC and university activities. When I returned from the Library, I saw my father packing his office and he was visibly upset. He told me that there was a misunderstanding and that he would no longer be working there. The impact of the array of emotions made me feel very uneasy. I did not understand what was happening. Suddenly two men came into the room dressed in military uniforms, search my father's brief case and escorted my father and I out of the building. They lead us into a military vehicle (it was lime green and off-white) and made us sit in the back seat. Dad sat on the left and I sat on the right.

I was very frightened. I keep asking repeatedly these same questions with no response. Where were we going? Who are these people? Where are they taking us? What was going on? And my father just sat there with tears in his eyes and would say nothing. The military men took us to Long John Silvers for lunch but there was no conversation. I can not explain how confused and concerned I was. Apparently one of the men could sense this. He tried to reassure and console me that this would all be over very soon. I remember when my father tried to go to the restroom; they followed him inside and left me alone outside in the restaurant. I had no idea if they where taking him away or if I would see him again. This made me extremely scared. Once, they returned I felt some relief, yet still unaware of what was taking place. We returned to the vehicle and continued the drive until we reached a hospital. One of the men opened the military car doors and took my father by the arm. He led him into the hospital and I was left in the car with the other man. I do not remember exactly how long the wait was; however, it seemed like an eternity. I later learned that they wanted a psychiatric evaluation of my father on that day.

That day was the beginning of the worse Christmas I have ever experienced. Our whole family was torn apart. My father was so emotional. I have never seen him in such a bad state. When he was driving me back home from Fort Worth, he cried the whole way to Killeen. I was overwhelmed with a combination of different emotions. How could I make it better? What did I do wrong? Was it something I did? Should I not have been at the University in Fort Worth? Did I get him into trouble? What was going to happen next? I was totally overwhelmed. I did not understand why the Army would do this to him because as long as I could remember the Army was his life. He always put his military career first.

My father being dismissed from the Army before his retirement totally effected my life. I have suffered emotionally and economically. I was cheated out of being able to enjoy the benefits of my father's social status, financial security, and his medical benefits. If the

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army had not wronged my father, I would have been afforded the opportunity to experience the pride of saying my father was an Army officer and the prestigious status of having our car saluted by military personnel while on a military post. I also would have had more financial security with my father providing financial support to help my mother. My mother was unduly forced with the total burden of trying to support a teenager by herself. Because of this situation and its effects, my mother was forced to relocate to a larger city to try and make more money. She was forced to move me from my secure environment of a small town where I was very settled and lived most of my life to a larger metropolitan area. This caused emotion distress again. Fortunately, I was able to grow in a positive manner from this move. However, this impact could have revolved the opposite way effecting a teenager. As far as the medical benefits are concerned, I was deprived of normal access to medical clinics for minor illnesses and could only go for an emergency. My mother, being a single person, was barley able to pay the monthly bills let alone provide medical insurance for me. A good example was when I was sixteen I had a kidney stone which required an operation. Because my father was not able to contribute financially this strain sent my mother into bankruptcy. We survived but we did experience abnormal stress and financial problems that could have been alleviated had I not been deprived of military benefits. My mother was a good mom and provided a good home for me as best as she could.

I have since learned of the reasons pertaining to this horrible day. It is my belief that my father was correct when he felt it was his duty and obligation to report the illegal use of the ROTC Cadet funds, the illicit sex act with a female cadet, racial discrimination, and sexual misconduct. I believe that my father is a decent, God fearing Christian man who believes very strongly in doing the right thing. He believes so strongly in it that he sometimes suffers unduly because of it. I believe that he suffered tremendously because of this military mistreatment. It is quite amazing to me that in spite of all the persecution that he has endured and all that he has lost, he has kept his faith, direction, and optimism throughout these years. How humiliating it was for a Major in the United States Army to take a position as a Sergeant E-5 in the Texas National Guard for approximately seven years without being promoted. Texas Christian University and the United States Army have damaged my life and my family's. I can not express the disappointment that I have in Texas Christian University and the United States Army for intentionally inflicting emotional and financial damage to our family. It greatly disappoints me and makes me wonder what kind of a world we are living in today.

I trust that you will take the time to read this letter and understand the contents therein. Thank you for your time and consideration. Should you need to contact me my phone number is (512) 261-0959.

Sincerely,

Shauna Mroski

Shauna Mroski

Subscribed and sworn to before me by said affiant, a notary public is and for the TRAVIS County, Texas, this 11 day of January 2000.

NOTARY PUBLIC FOR THE STATE OF TEXAS

Commission expires:

SHARON M. JOPLING
Notary Public, State of Texas
My Commission Expires
FEB. 20, 2002

On 31 August 1986 I, Kai Lynn Tucker, was invited to SGM Vyers apartment. During the time I was there he made advances towards me and we had intercourse without my consent. The circumstances surrounding this incident are lengthy and difficult to put in words. I was unable to handle the situation at the time because I was very confused and frightened. I had never done anything to entice the SGM into sexual relations. He was a man I respected and went to for advice concerning ROTC.

Afterwards, I chose not to tell anyone of the incident. I tried to carry on in ROTC without raising any suspicions. I also started talking to Maj. Boswell about ROTC. After Maj. Boswell and I started talking, I began to get the impression that SGM didn't like it. He would make comments; he called me into his office everytime I left Maj. Boswells. Without telling Maj. Boswell about the incident I tried to advise him not to trust SGM Vyers. When the allegations about Maj. Boswell began to arise and I found out about SGM Vyers involvement, I felt somewhat responsible I still didn't want people to know about what happened but I did offer my support and friendship to Maj. Boswell.

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During a close friend's visit in late November I told her what happened with the S&M. I asked for her trust but for reasons I can understand she felt she needed to report the incident without disclosing my name. During December and January, different military personnel found out including Maj. Boswell and one effort was made to contact me by Inspector General ... Sleeper.

Eventually, I chose to make my statement because daily people accused me not always verbally of being guilty of something. I made contact with the Liberal Arts Dean and Dean of Students. On 27 January 1987, I gave my statement to Inspector General Sleeper and representatives of TCU. I took a ~~lie~~ polygraph on 29 January 1987 concerning the incident.

Throughout the 2½ years I was involved in ROTC, I saw alot of good and bad. But I think what happened to Maj. Boswell "took the cake." Maj. Boswell conducted himself in a totally professional manner. He exhibited a genuine concern for the cadets and the corps. He earned my respect as well as the respect of others. His situation is unfortunate and undeserved. I hope some justice can and will be served.

Rae Lynn Tucker

326 Clouded Mill Dr
Alexandria, VA 22304

August 4, 2000

Army Board for the Correction of Military Records
Statement for Record Regarding Actions of Jim Boswell

To Whom it may concern:

I am writing this statement in support of Jim Boswell. Although I cannot and will not attest to activities that were outside my purview, I can attest to the character and certain specific actions of Jim Boswell.

In 1986, I was a scholarship student in the Texas Christian University (TCU) Army ROTC department. During the summer before SY 86-87, my mother became very ill. I spent most of August in the hospital with her and taking care of my little brother. When it became apparent that she would not live for many more weeks, I decided to postpone my return to TCU and contacted professors and the ROTC department, specifically LTC Bruce Stacy. Each department and individual, including LTC Stacy was supportive and understood my situation. However, after the telephone conversation with me, LTC Stacy directed the ROTC staff to prepare the necessary paperwork for my removal from ROTC and immediate placement on the enlisted roles, due to my obligation incurred as part of the Army scholarship contract. LTC Stacy at no time indicated his intentions to me, quite the contrary, he was very supportive during our telephone conversation. Then, Major Boswell was directed by LTC Stacy to process the requisite paperwork. Instead, Major Boswell and Sergeant Brown of the department delayed the execution of this order and contacted me directly to inform me of this situation. Although I was stunned by LTC Stacy's decision, I did return immediately to TCU.

LTC Stacy was visibly shaken by my return and upset with Major Boswell, who had taken the humanitarian steps to inform me of my impending fate. To this day, neither I nor Major Boswell, Sergeant Brown or the rest of the department understand why LTC Stacy attempted to take these actions. I am sure that most students and faculty can attest to the lack of professionalism and compassion that he demonstrated at any given time throughout his tenure. It oftentimes was without provocation or any justifiable reason and directed at random targets.

After this incident, Major Boswell's work environment was extremely stressful. He seemed to become the target of LTC Stacy. The facts of my incident were no secret to most of the department, as my mother died shortly after my return. The working environment for Major Boswell continued to deteriorate after this incident and few in the department questioned that it was at least in part due to this incident. Many cadets felt so strongly about the poor leadership of LTC Stacy, that other members of the cadre were asked to conduct commissioning ceremonies for the graduating class.

I have no doubt that without Major Boswell's intervention on my behalf, my life would be much different today. LTC Stacy intended to implement his decision to forcibly enlist me into the Army. Jim Boswell demonstrated the professionalism and compassion that we should expect from our officers and as a result was subject to considerable unfair practices. Despite the ABCMR action to partially correct the record and eliminate the Stacy report, I concur with Lieutenant General Robert L. Wetzel (USA retired) and Major General Roger Price in their recommendations. Strongly suggest removal of the second biased report, retention of Jim Boswell and promotion to Lieutenant Colonel. This action, I believe will correct an injustice.

Sincerely,

Todd Weiler

I CPT Michael J. Hargis, being first duly sworn, do depose and say:

1. On 29 July 1988 I accompanied MAJ Dennis Olgin on an interview with COL Aldrich, at the latter's residence in Harker Heights.

2. During that interview, I took notes for the purpose of memorializing what was said, and refreshing my memory of the interview. I have reviewed those notes before giving this statement.

3. During the interview, COL Aldrich's attitude towards MAJ Boswell was one of hostility. That attitude was carried over even toward MAJ Olgin, MAJ Boswell's attorney. COL Aldrich admitted that he did tell MAJ Boswell "I will kill you".

Michael J. Hargis CPT JA
MICHAEL J. HARGIS

THE STATE OF TEXAS

COUNTY OF BELL

BEFORE ME, the undersigned authority, on this day personally appeared MICHAEL J. HARGIS, known to me to be the person whose name is subscribed to the foregoing instrument.

GIVEN UNDER my hand and seal of office this the 1st day of May 89.

NOTARY PUBLIC
FOR THE STATE OF TEXAS

My Commission Expires: 19 JUL 1992

AFFIDAVIT

State your name, address, and occupation. **Mr. Sam Kinser; 506 Ward Ln, Burleson, Texas 76028 ; Brigade Senior Logistics NCO.**

Where are you employed? **I serve as the facility manager of the Texas National Guard Armory, in Armory 2 on McCart Avenue, Fort Worth Texas. I am the senior Non Commissioned Officer in charge of the organization's logistics and facility maintenance, since 1993. Mr. Boswell worked under my NCO supervision from 1993 until his involuntary removal in February 1999. Mr. Boswell was the Point of Contact for the Sheriff's work release program and the Tarrant County's community service program for interviewing, developing a work schedule and supervising offenders. We worked well as a team. Additionally he was the Brigades' school manager.**

Mr. Boswell alleges he was a Civil Service GS-7 step 5, received about $ 31,060 annually as of 01-03-99, was an excepted civil service employee from 15 November 1992 to 4 February 1999 and that Lieutenant Colonel Parrish provided a notice to Mr. Boswell requesting dismissal or transfer (December 1998). **These facts are not in dispute.**

Why are you providing this statement? **I was asked by Mr. Boswell to respond or comment on these questions. I had already written a statement in response to an Army investigation conducted under the procedures of Army Regulation 15-6 as a result of Mr. Boswell's EEOC complaint against the Administrative Officer and the Brigade Commander. This testimony reflects this statement as well as my memory. I hope my testimony will clarify the truth and will improve the Guard. The Guard must come to a realization that there are consequences to discrimination and reprisal.**

How do you feel about Sergeant Boswell or Mr. Boswell's involuntary dismissal from Civil Service? **I have mixed emotions. I was happy that Mr. Boswell's career was repaired and sad that he had to leave. I felt that the Guard could have accommodated his change of status. Failure to do so was a injustice. Mr. Boswell was promised that if his commission was restored, a job would be provided commensurate with his grade. Mr. Boswell was a very efficient employee, an outstanding**

instructor, team pl[illegible] soldier and technician. He was respected and very well liked. Because of his sixteen years of performance as an officer on active duty, he was really good and overqualified for the position he occupied. Yet, he was humble and accepted his position as a Sergeant in the Texas National Guard. Most of us admired him for accepting the change of status from Major to Sergeant. He was selected as runner up for the 2d Brigade's NCO of the year, I believe, in 1994. It was obvious to me that the Department of the Army and Texas Christian University hurt Boswell, while he was on active duty, in the worse possible way.

Did you have a role in his dismissal from the Guard? **No. I recommended that he be promoted. The National Guard Full Time Management Office handling the removal action.**

What was your role in the investigations? **I testified during only one of the investigations, the investigation conducted by Lieutenant Colonel Ward. I responded to four or five questions.**

Were you aware that Mr. Boswell provided the chain of command with several freedom of information request, one of which was submitted in January of 1998. **I was aware that Mr. Boswell had on going complaints against management and the Chain of Command of the Texas National Guard, furthermore, that he provided numerous requests for information and written complaints to the Texas Adjutant General, the Adjutant General and 49th Armored Division Commanding Generals and Chief of Staffs, several United States Congressman and Senators, and to Governor George Bush.**

Were you aware that the government responded to the FOIA request on 15 April 1999 with 245 pages of documentation regarding Mr. Boswell's discrimination and retaliation complaints? **No. I lost contact with Mr. Boswell except for exchange of an occasional EMAIL.**

Were you aware of Captain Miller, the Navy investigating officer's finding (Complaint 2, Finding 3, case file) restated as follows?

"Had Boswell previously filed a complaint that was a protected nature?" Answer. "Yes". "Was Boswell subsequently subjected to an unfavorable personnel action?" Answer. "Yes." "Did the Colonel know about the IG complaint or protective disclosure?" "Yes". "Was there evidence

that Boswell's request would have been withheld by the Colonel had Boswell's IG complaint not been filed?" The investigator answers "there is no other reasonable explanation other than in retaliation". **No I was not.**

Why didn't management provide Mr. Boswell this documentation while he was still employed (prior to his termination on February 5 1999)? **I do not know, but have my suspicions.**

In accordance with 29 CFR Part 1614 - "One of the major objections to the federal sector process has been conflict of interest in having agencies investigate themselves and be responsible for making all decisions throughout the fact finding process". Would you agree that the agency delayed investigation, failed to produce the results of investigations, created an appearance of unfairness in the process, disadvantaged complainant and continued to discriminate until his release from civil service? **Yes. I would.**

Had the investigations been conducted by an unbiased, objective party, in your opinion, would the results been more favorably to Mr. Boswell. **Yes.**

Did complainant report the violation of Army regulations such as viewing of pornography video in the federal work place during normal operation hours? **Yes. On one occasion the complaint involved Major Owens. On the other occasion, the complaint involved Sergeant Kissinger.**

Were you aware that Colonel Bisson did not forward correspondence that could reasonably have favorably influenced personnel actions and remedy for continuing service in the Guard as a field grade officer and for promotion of Mr. Boswell to the position of Lieutenant Colonel? **No. I was not.**

After Mr. Boswell filed his EEOC complaint resulting in an investigation, how was Mr. Boswell treated? **He was treated unfairly, humiliated, deprived of his usual work station, stripped of his duties, and not allowed to attend meetings in which his success and all the other employees success depended. I was embarrassed. Before, when Mr. Boswell reported wrong doing, the agency withdrew the employee from phase II MOSQ and Phase II BNCOC, two schools affecting enlisted promotion. The employee was treated differently. Truthfully, I put myself in a crunch when I tried to reason with management on several**

occasions on the behalf of Mr. Boswell. I experienced the cold shoulder, and may have lost out on a job. However, I never complained.

Did management's treatment of Mr. Boswell disadvantage him of preparing and substantiating complaints? **Yes.**

Did Mr. Boswell do any thing which would warrant different treatment from other employees? **No. He was caring, sensitive and always there for us. We developed an outstanding relationship. I was his mentor and in a sense he was mine, and a good one. He taught all of us a lot about leadership, about courage and conviction. He will always be remember and admired. Fellow soldiers communicated to Mr. Boswell about any thing, at any time, about stress, personal problems. It did not matter. Mr. Boswell would listen.**

What are your thoughts about pornography in the work place? **Acts can not be condoned. It interferes with professionalism. Member from the community and family visit often. We never know when.**

Were there examples of sexual impropriety or racial discrimination. **One of our female soldiers, filed a sexual harassment complaint. She was a good worker, leader and had a good heart. I wish we could have retained her. After speaking with her, Mr. Boswell spoke with the Commander concerning his perception of this complaint and one other involving racial discrimination. Mr. Boswell relayed to the commander and I that these complaints were not handled properly. Specifically, concerning the racial discrimination, Mr. Boswell objected to Sergeant Payne's disciplinary punishment for an alleged violation of Uniform Code for Military Justice and he felt that the leadership should bear responsibility. On the racial issue, I sided with management. But management had no excuse to treat Mr. Boswell differently. I disagreed with management's response to Mr. Boswell.**

Did the investigations appear to be fair? **I can only speak for the one I was personally involved? I can not say that they were fair because they were performed in house and influenced by management. Witnesses, such as I, could feel the tension and it was in our best interest to side with management, not with Mr. Boswell. Therefore, the results were tainted. Several times the administrative officer "wanted to clear the**

air" and defend management's position. For example, the vulgarity used during meetings and in the work place in general was addressed formally, in writing and also verbally in successive meetings. Boswell had strong religious beliefs and was offended by the "F" word and he complained to me on a number of occasions. Boswell was embarrassed and ashamed when dirty language was used in the presence of work release and community service personnel, especially in the midst of female personnel.

Are employees in the Texas National Guard free from harassment and abuse? **Every organization will have its share of discrimination. In the Guard we commanders and administrative officers who will be strong in certain areas, like tactics, but weak in other areas. This makes the duties and responsibilities of the senior NCOs more difficult because we must compensate for the short comings. In this case I was caught in a cross fire.**

What happened during the meeting Mr. Boswell had with management? **I remember vividly that Mr. Boswell was told that he lacked courage. This was misrepresentation. If you knew Boswell, he did not lack courage. It appeared that Mr. Boswell was angered at that remark and was on the verge of loosing control. Now, after the fact, I am aware that the Navy Captain investigator had recommended that Colonel Bisson be disciplined. This has all sorts of repercussion. This explains why management seemed to discredit and defame Mr. Boswell's character. It was in retaliation for making complaints.**

Was Mr. Boswell's career tarnished? **I think so. He did not receive an end of tour performance rating. He was not given an award for selection as the Brigade runner up NCO of the year, for preventing a potential danger near the female shower point (He killed a four foot two inch rattle snake with the butt of a weapon) during a field exercise, for an end of tour award, for a civil service award and for combined service of twenty plus years for an end of service award. I can understand management's rationale for depriving the employee from an award for the snake incident, but Mr. Boswell should have been recognized for the other examples. Plus, he did so much for our Brigade. Management appeared disinterested in conducting a farewell in the customarily fashion where we dine together. Mr. Boswell was not given an annual**

civil service nor military performance rating during his last year. He still should have been rated. All previous years since 1992, he received successful performance ratings and was in receipt of an impact award for each time he attended annual training. Management failed to promote Mr. Boswell each consecutive year between 1992 through 1999.

Concerning the investigation into Mr. Boswell's EEOC complaints, one witness reported that the Administrative Officer collecting all the witness statements and that the Brigade Commander was present or in close proximity, within hearing distance, when the investigator conducted the interviews. What did you witness? **At the time I thought nothing of it. In retrospect, it did not make sense to do it this way. I can see how Mr. Boswell feels as if the investigation process was coerced. This was a method to intimidate employees to support management's side. In future investigations, it should not be allowed.**

What was the Adjutant Generals' role? **To support and protect management. I have been in the Guard a long time. The guard will be much better off when we listen to our employees, treat them all fairly and with respect. Once an employee goes cross ways with management, reprisal is expected, hostility surfaces, and morale goes down. An employee can not raise a complaint without fear of reprisal. That is just the way it is. I do not expect it to change. I am very loyal to the Guard, but wish this climate would change. Management was unhappy about Mr. Boswell going to the Inspector General and to Congressmen. I read Mr. Boswell's letter to Governor Bush, the Commander in Chief of the Texas National Guard.**

Would you advocate a ruling that the Department of Army, National Guard Bureau, and the Adjutant General of Texas be held liable for damages to this injured civil service employee? **Yes. This is what it will take for management to do the right thing in the future. I also believe the Governor and state legislatures should be more involved.**

What was the difference between the treatment of Colonel Richardson, the former Brigade Commander and Colonel Bisson's treatment of Mr. Boswell? **Night and day. Colonel Richardson wrote letters in Mr. Boswell's behalf. Colonel Richardson testified, personally, at Mr. Boswell's review before the Army Discharge Review Board. He and several other**

distinguished Guard leaders to include the former Adjutant General and Chief of Staff testified in Mr. Boswell's behalf. When the pentagon rejected the boards finding, a finding ruled in favor of Mr. Boswell, Colonel Richardson wrote the pentagon. He also wrote a three star General. Colonel Bisson, on the other hand, supported Lieutenant Colonel's Little and Lieutenant Colonel's Parrish recommendation for Mr. Boswell's removal from the organization.

Were you surprised of the Department of Defense Whistle Blower investigation's finding of reprisal, released in July 1995, of the events which transpired when Mr. Boswell was assigned at Texas Christian University? **No. What I know of the details, Mr. Boswell was done wrong. He should not have been discharged to begin with. The Governor and the Texas Coordinating Board should have revoked TCU accreditation.**

How did you feel about the Department of the Army's Board for Correcting Military records decision for Mr. Boswell's reinstatement with back pay? **Very happy. Mr. Boswell paid a price**. Instructors can not have sex with cadets. It appeared as a cover up.

Were you aware of Mr. Boswell's Union and EEOC grievances mostly submitted between 1 October 1998 through termination of the employee from civil service on 5 February 1999 concerning an objection to Mr. Kissinger's involvement with pornography on his computer in the work place? **Yes, and I also reported my suspicions to the administrative officer.**

Would you have liked the Adjutant General to endorse a recommendation to Mr. Boswell's two "special" action promotion boards to Lieutenant Colonel convened August through November 1998? **The Texas National Guard 49th Armored Division Commanding General, Major General Lopez and the Adjutant General, Major General James have no acceptable explanation for not assisting Mr. Boswell and providing a strong endorsement. This is inconsistent with taking care of the soldier.**

Was this additional reprisal? **Yes, and the decision was based on bad advice. By not helping Mr. Boswell, management has compounded and complicated injustice**.

As you know Mr. Boswell experienced transition from federal civil service to a restored status from military active duty. Was Mr. Boswell's Whistle Blowing in the Guard a factor in the Department of Army decision to not retain the employee? **I believe that Whistle Blowing was the causal effect for Mr. Boswell's involuntary termination from civil service and the Texas National Guard. I would have favored Boswell's retention as a G S - 9 or G S - 11 and equivalency rank to Lieutenant Colonel or higher. We lost a tremendous asse**

Mr. Boswell alleges the following: (1) The agency wrongfully dismissed the EEOC discrimination complaint, a complaint submitted on the basis of religion and retaliation in the work place (2) The Army EEOC investigator, LTC Ward, previously worked for the employee's supervisor, LTC Parrish (3) Ward and Parrish were friends (4) LTC Ward attended the funeral arrangements of LTC Parrish as LTC Parrish unexpectedly passed away due to heart failure on or about 19 July 1999 at the approximate age of 53. **I saw Lieutenant Colonel Ward at Lieutenant Colonel's Parrish funeral. I wished that he had treated Mr. Boswell more fairly and that he was still alive and the outcome had been different. It appeared that management supported intimidation, humiliation, reprisal, discrimination, harassment and threat of termination and transfer. Harassment included changes of duties in the civil service work place, denial of privileges, and denial for a request for agency audit and bias concerning General Officer/Agency handling of the case. Lieutenant Colonel Parrish was involved in a major controversy: He experienced unnecessary stress and possibly supervisor pressure. This is another reason why this statement is prepared.**

Would you question the DOD Whistle Blower Investigation reference that Mr. Boswell's discharge from active duty was "arbitrary and contrary to the principles normally applied"? **No. I felt it was a disgrace. I am proud of those officers and senior NCO's in the Guard as the former State Command Sergeant Major who testified for Mr. Boswell.**

Can you verify that after Mr. Boswell reported protected disclosures to the Inspector General and Congressmen on a consistent basis from 1993 until February 1999, Agency officials, Lieutenant Colonel Parrish and Lieutenant Colonel Little, informed the employee that **each** requested that the National

Guard Full Time Management take action to terminate or remove plaintiff from employment. **Yes.**

Can you verify that Mr. Boswell reported to the Inspector General misconduct (selling of Mary Kay products on duty) and fraud (cover up investigation concerning wreckage of M 1 tank where a subordinate, junior employee working in the same office investigates a senior)? **Partially. That was before my time.**

The agency IG states: July 28 1999, to Mr. Boswell that the agency "has no information". The employee requested that Article 138 complaints be investigated against the Commanders, as required by law, and reviewed by HQ DA. Were you informed of this process? **Mr. Boswell would inform me of his actions but that is all I knew about this subject.**

Mr. Boswell alleges that in spite of being credited for Advance Non Commission Officer Schooling, graduate from Command and General Staff College, and possessing an MPA Degree, consistently scoring 300 on the annual physical fitness test, the agency held the employee to the grade of Sergeant E-5 during the duration of employment from January 1991 until January 1999. **He remained a Sergeant during his tenure with the guard.**

Mr. Boswell alleges that the agency has failed to address the reasonableness or "unreasonableness" for retaliation for reporting misconduct in the work place and that the employer's failure to exercise the waiver in favor of retention constitutes additional reprisal. **I Concur.**

Was the agency successful to keep secret - the officer's viewing of pornography video, Bisson's reprisal, and a Texas Guard rating of last, 52 of 52 states, in the rating of education success concerning members of the Texas National Guard? **The pornography and reprisal was not disseminated through the chain of command. We never knew the truth. The Adjutant General's Command Sergeant Major publicized the poor rating of education success and requested focus and corrective action from the leadership in the field.**

What do you know about Lieutenant Colonel Parrish's reference to Mr. Boswell as a "son of a bitch"? **Only that it caused additional turmoil.**

Do you verify that shortly after the Lieutenant Colonel communicated to the National Guard's Human Relations Officer (HMO) the reason for employee termination, he also had heart failure: **Lieutenant Colonel Little had by pass surgery at approximately age 45. Yes. I was surprised about the deterioration in health in both incidents concerning Lieutenant Colonel Little and Lieutenant Colonel Parrish.**

Would you agree that engaging in wrongful prohibited personnel actions takes its toll on the employee and employer, and families are affective? **Yes.**

Were AG policy letters including Sexual Harassment, Retaliation in the Work Place and Prohibition of Abusive language and Violence in the Work Place disseminated to employees. **Yes they are put on the bulletin boards.**

It is clear from the policy reading that the AG is committed to an ethical code, law concerning prohibition of sexual harassment, religious, and racial discrimination, pornography, that it was a duty for a member of the organization to report misconduct, and that disclosure is protected? **Yes.**

In Mr. Boswell's case was activity protected? **No.**

An investigation concluded reprisal and recommended Colonel Bisson, the retaliator, be disciplined. This finding was with held from the employee until April 15 1999 two months after the employee was terminated. Does this give the appearance of cover up? **Yes it does. I now am embarrassed and wished I would have been more candid with management. The agency's cover up and inaction with regard to misconduct are contributing factors to the perception of low standards and readiness in the Guard.**

During the EEOC complaint process, the employee alleges the Agency harassment came to a peak when the employee's father was admitted to Scott and White Hospital and subsequently to the VA hospital due to heart attack and disability. **I can not attest to when the harassment was worse.**

On December 20, 1998, the agency provided the employee a letter of termination with a planned effective termination date on or about 29 January 1999. The employee submitted a grievance to the agency because the

employee was denied time to prepare EEOC complaints and to conduct counselor interviews. The employee felt that the quality of the EEOC complaint was affected and that he was disadvantaged by the agency by agency actions. **Management felt that Mr. Boswell was given adequate time to conduct EEOC business.**

The employee alleges that he was deprived of the financial resources, drill pay, earned on a make up drill? **Agree. He should have been paid for the drill. He prepared packets on NCO and soldier of the year. One soldier went on to win Division soldier of the year.**
Mr. Boswell alleges that an event leading up to the termination action on January 29, 1999 was his harassment complaint concerning a hostile environment, this time for reporting a suspected violation of law, confirmed a week later by a co worker's solicitation of sex from a 13 year old boy and possession of nude photos? **We both had suspicions but lacked evidence. I did however discuss the perception with the administrative officer.**

As the acting First Sergeant and Senior NCO of the unit, could you verify that once in Dec 98 & once in Jan 99, the employee was treated for reactive depression, given medication, and was under doctor's care and on the 29 January 1999, employee left work sick and nauseated and that this stress was a contributing factor to sleepless nights. **I verify that Mr. Boswell correctly requested and was granted sick leave on 29 January 1999 and on other dates.**

What conclusion do you draw that the agency found employer retaliation in November 1997 but General Lopez disapproved the findings and the agency findings were withheld until 15 April 1999? **It appears as improper General officer misrepresentation, influence and neglect.**

Would you have wanted the agency to follow "rules meant to insure that parties can obtain mutual knowledge of all relevant facts gathered by both parties"? **Yes.**

Would you have liked that Mr. Boswell be given the opportunity for cross examination? **Yes, it only tells the Agency side of the story and hides the truth defeating the purpose of investigation.**

Were you aware that Major Greene, a Black Army Chaplain, corroborated, confidentially, that he too had a personal hostile discrimination experience with Lieutenant Colonel Parrish? **No I was not.**

Did the employee disclosed information that evidences a violation of rules, laws, regulations, gross mismanagement, waste of funds and abuse of authority? **Yes.**

Were Mr. Boswell attempts to get help through Inspector General Colonel Thornburg and Colonel Beto located at Texas National Guard, P.O. 5218, Austin Texas 78763-5218 and to Congressmen Armey, March 1991, Pete Geren December 1995, Sam Johnson September 1997, Joe Barton March 1998 Congresswoman Granger and Senator Gramm Fall 1998 considered appropriate? **Yes. A soldier has a right to correspond with Congressmen at any time.**

Mr. Boswell is in prayer that the Agency will make plaintiff whole again similarly to other civil service EEOC or Merit Board rulings that authorized promotions with seniority and back pay with interest for retaliation? **Equal treatment is fair. Army action should be remedial action desirable to resolve issues and since reprisal was found compensation is in order.**

Senator Nunn concluded: "Mr. Boswell was subject to retaliation for whistle blowing in 1986 and 1987". Lieutenant General Wetzel concludes that plaintiff should be promoted to Lieutenant Colonel. Does this reinforce your position? **The public and community have interest: It can be factually shown that the employee was victim of reprisal and retaliation. Under theories of negligence and conspiracy, the National Guard should confirm or deny consequential injuries naturally flowing from the employer's wrongful conduct, such as pain, suffering, and loss of reputation. Military leaders are to train, mentor, and love their soldiers. Soldiers attending Texas National Guard schooling and leadership and total quality management training need to feel that the agency's leaders are law biding and ethical.**

Did the employer tell Mr. Boswell that it would be a mistake to file an EEOC complaint. **I was not aware of that.**

What is expected from the Office of the Governor? **That is way above my level. The Agency response was clearly unreasonable and deliberately indifferent to the harassment. If any of us, senior NCO's, condone this activity we damage our profession, the Guard's reputation, our readiness and ability to recruit and retain soldiers. The Governor must ensure the Adjutant General enforces the law and Agency policy. Once violations are reported and they include General Officer misconduct, a reasonable person may conclude that it is an obligation and duty to investigate thoroughly and quickly and to protect the abused from further harm. Seeking an audience with the Agency's Adjutant General, General James and Governor Bush had a negative effect for Mr. Boswell. Education funds are a tremendous commodity in the Guard. Mr. Boswell had a duty to place personnel in schools and account for expenditures and he found irregularities, the same problems which accounted for a rating of last place among all the states. An employee must be able to question fraudulent actions without fear of reprisal. Another employee provided a statement that reveals Mr. Boswell was "placed in another area as though a little child being punished. He no longer was allowed to perform duties and responsibilities." The Agency actions and correction process is materially unfair from the lowest to the highest Agency level. It seems that the Agency has denied appellant equal access and has rewarded peers for inaction. I advocate that the NCO's in the Guard must be stronger. A reversal in agency action will bring integrity in agency systems. Without the Texas National Guard Commander in Chief's enforcement and recognition of systemic error and concerted, caring reconstruction, efforts such as recruiting, retention, and readiness are degraded. Soldiers, females and minorities in particular, will lack confidence in protection mechanisms.**

Anything else? **No thank you.**

Do you certify under the penalty of perjury that you are telling the truth and that this is your statement, and your signature. **I do.**

Samuel W Kinser

Mr. Sam Kinser

Subscribed and sworn to before me by said affiant, a notary public in and for Harrison County, Texas, this 4 day of ~~February~~ APRIL 2000.

My commission expires:

TRINA BOWDEN
Notary Public
STATE OF TEXAS
My Comm. Exp. Mar. 12, 2002

Trina M Bowden
Notary Public for the State of Texas
County of Harrison

Affidavit from: SGT Clinton K. Payne, II.

1.) Please state your position and provide your address: **Supply Sergeant, HHC 2d Bde 49th Armored Division, Clinton K. Payne, II., SGT. I reside at: 7404 Tallow Wind Trail, Apt B, Fort Worth, Texas 76133.**

2.) Was SUBJECT, **James D. Boswell**, a victim of unlawful harassment by his Employer, The Texas Army National Guard? **Yes, My opinion is solely based on the EEO Policies set forth by the Texas Army National Guard (Adjutant Generals Office). Memorandums: Equal Employment Opportunity Policy, dtd 22 October 1995, Profanity, Abusive Language, Provoking Gestures Policy, dtd 3 April 1998, Freedom from Retaliation, dtd 10 July 1998.**

3.) Are the Harassers properly identified as Colonel James Bisson, and Lieutenant Colonel Garland W. Parrish? **Yes**

4.) Were the harassers in the supervisory Chain of Command? **Yes**

5.) Did the harassers have the authority to undertake or recommend tangible employment actions and to direct the employee's daily work activities? **Yes**

6.) The employee alleges discrimination based on race and religion in violation of 5 U.S.C. 2302 (b) (1) (A) and reprisal for whistle blowing activities protected under 5 U.S.C. 2302 (b) (8). The Office of Special Council in a letter directed to the complainant dated September 10, 1999 stated that the OSC/MSPB lacks the authority to order any corrective action to the Texas National Guard. Were you aware of this letter? **No**

7.) In your opinion was there a link between the reprisal and wrongful action Mr. Boswell experienced from the Department of the Army while Mr. Boswell was on Active Duty and during the processing of the complaints involving anti discrimination within the Texas National Guard? **I Believe So. I also believe they (COL Bisson, LTC Parrish) felt they could intimidate Mr. Boswell, to the point he would give up his complaint.**

8.) Was Mr. Boswell in a hostile work environment? **Yes**

9.) Did Mr. Boswell experience defamation of character? **Yes, rumors were spread by the Full Time Staff making the M-Day Personnel think Mr. Boswell was incapable of doing his job, and that if they would say anything to him they would by scrutinized by Mr. Boswell, or his attorney.**

10.) Did Mr. Boswell's Chain of Command exercise reasonable care? **No. They are above all Rules and Regulations, set forth by the Adjutant General, and they knew even if a complaint is lodged against them, a minimal investigation would occur, and the situation would be covered up.**

11.) Does retaliation apply to technicians? **Yes, According to the Adjutant Generals Policy letter, it is supposed to APPLY to everyone. However there is no working or productive mechanism within the states structure to enforce or prohibit harassment.**

12.) Were you aware that a Navy Investigator affirmed reprisal and recommended that COL Bisson be disciplined? **No, Not until Mr. Boswell informed me, but by then he had already been discharged.**

13.) When Mr. Boswell spoke to your Company Commander in your defense of what he believed that you were the victim of racial discrimination, how was he treated? **Once that information got back to LTC Parrish, it appeared that the reprisal against Mr. Boswell was heightened.**

14.) Did you testify during an Army Investigation? **Yes**

15.) How would you describe the investigation? **Very Bias, all the questions asked could only be answered in the best interest of the Army.**

16.) Did the agency afford Mr. Boswell protection against retaliation? **No**

17.) Does the agency afford an effective complaint process? **No, once you file a complaint you are *BLACKLISTED* and know throughout the system as a TROUBLE MAKER.**

18.) What was wrong with the investigation? **There was NO CONFIDENTIALITY even during the interview process, LTC Parrish, and COL Furlow, were both within hearing distance of the interview. Then all statements were given to SFC Elrod, who is LTC Parrish's subordinate, with his office adjacent to his. It was well known that LTC Parrish reviewed all the statement prior to SFC Elrod sending them to the interviewer.**

19.) Did you challenge the objectivity of the investigation? **Yes, and I stated such to Mr. Boswell. In that the procedures or protocol used was inappropriate. It appeared that the agency's mind and decision was already in place.**

20.) Did the agency provide assurance of immediate and appropriate corrective actions, to enforce preventive and corrective measures? **No, From my past experiences with the agency, if you filed a complaint, you are labeled as a trouble maker, and eventually they would find a reason to terminate you or make your work environment unbearable, to the point you would quit.**

21.) Why didn't the agency release the findings of the Navy Captain's investigation? **The findings shows an inequity where I, being a Black Man, had been punished, and that punishment was based upon hearsay, no fact finding investigation was every conducted by the Brigade Commander nor his Staff, whereas, White soldier's who had committed far greater offenses had not been punished at all.**

22.) Have you witnessed any major obstacles to submitting a complaint? **Yes, from first hand knowledge, when I submitted a complaint the EEO Officer (Rosie Sanchez) told me there was no way the person I had filed the complaint against would do such a thing. She also spoke of him in a unprofessional manner i.e. Sam (first name) instead of MSG.**

23.) What is your conclusion with regard to the treatment of Mr. Boswell? **The agency should be held accountable for its lack of concern regarding a complaint. There should be no worry of retaliation from the individual concerned. The agency knows that the burden of proof is placed upon the individual making the complaint. Once the complaint has been filed (or even while you are in the process of talking to someone regarding a complaint) the agency is on the phone contacting your supervisors and letting them know what is going on. Thus preparing the agency, to cover up the situation. The agencies lack of enforcement holds them accountable for the actions of supervisors.**

24.) Did Mr. Boswell take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise? **Yes, he filed a number of complaints, but each time LTC Parrish made his working environment more hostile.**

25.) Did you have knowledge that the agency's supervisor made a statement to Mr. Boswell that filing an EEOC Complaint would be a mistake? **No, but it is a well known fact that by filing any type of complaint concerning the Texas Army National Guard, hostility will follow you in the work place.**

26.) Does harassment remain a pervasive problem in the Texas Army National Guard? **Yes. The Good Old Boy way of doing things is alive and well. It seems that the number of unfair employment practices has risen, especially regarding minorities. I lack confidence that any complaint of discrimination will be thoroughly investigated. I lack any confidence that the Agency will look into or investigate any complaint and be objective. I believe that the agency will illegally conspire and harm the complainer to avoid any negative findings against the agency.**

27.) In your opinion has the agency operated in compliance with EEOC doctrine and in good faith? **No, Mr. Boswell's complaints only led to my scrutiny from his supervisors. Mr. Boswell's treatment was based on his complaints regarding pornography, profanity/abusive language. Current Regulations prohibit such actions within the workplace, but when Mr. Boswell complained, he was treated with unfair discriminatory practices, instead of the agency, putting and end to the improper use of government equipment being used to exploit the pornography, etc.**

28.) Did the authority use influence to assign undesirable tasks to Mr. Boswell? **Yes. They even went to the extent of moving his desk as far away from the others in that work area. Mr. Boswell was made the phone boy for the Brigade Headquarters. When Mr. Boswell objected to his reduction in work assignments, the agency went even further by monoriting his Physical Fitness Program, and then removing him from the Tuesday morning meetings which he had attended up until that point. What LTC Parrish, did was effectively remove Mr. Boswell from any communication loop with in the office. It was apparent that Mr. Boswell was no longer welcome in the work place. After, all the weekend hours of work, to aid the brigade, the chain of command punished Mr. Boswell, for filing a complaint. I am very certain that I was only one who voiced my opinion concerning the unfair practice.**

29.) Did Mr. Boswell provide a statement in your behalf regarding a proposed EEOC complaint? **Yes, that statement was dtd September 1999.**

30.) Have you ever been referred to with the racial epithets **"Niger"** in the work place? **Yes, that was the basis of my EEO Complaint, I had overheard the term used several times, and then I was given a folder in which another full time soldier, described me as a "Niger".**

31.) Did a Black Officer, Chaplain Green, ever convey LTC Parrish prejudicial actions? **I was told about the situation, but MAJ Green did not tell me personally.**

32.) Do you agree that the agency has an adequate policy and complaint procedure? **No, their policies are disputable. Officials continuously fail to carry out their responsibilities, and conduct effective investigations. They continue to subject any individual who files a complaint to inner office harassment.**

33.) Has the agency demonstrated that it will tolerate harassment based on sex (with or without sexual conduct), race, religion,, age, disability, and protected activity (i.e., opposition to prohibited discrimination or participation in the statutory complaint process)? **Yes, they have made it vary apparent that they are not willing to find any discrimination within the guard structure.**

34.) When you were interviewed, when management investigated the complaints, alleged harassment, did the official conducting the interview remind you about the prohibition against retaliation? **No**

35.) Were the questions phrased in a manner to encourage the truth? **No, the questions were phrased to defeat the purpose of the investigation, you could only answer the question in one direction. When I wanted to elaborate, on a specific reply the interviewer would rush into another question.**

36.) Were you witness to the meeting when Major Daniel called Mr. Boswell a coward? **No, I heard about later.**

37.) Were you at the meeting where Mr. Boswell alleges the unprofessionalism and the use of over 40 words of vulgarity? **Yes, I was confronted by Mr. Boswell several weeks before the incident. Mr. Boswell ask that I not use vulgar language around him, since it was offensive, and went against his religions beliefs, I agreed with Mr. Boswell, but I told him that whatever conversation was going on within my office, if he can in during it, then he would just have to understand. It appeared to me that everyone, got offended because Mr. Boswell, ask that the vulgar language not be used in front of him.**

38.) How was Mr. Boswell defamed or his reputation tarnished? **We (the full time staff) were only given the agency's version of the outcome of the investigation. We were not told of any violations, when in fact the reprisal issue was found but not told to us.**

39.) Why are you making this statement? **"Protected Activity" mean opposition to discrimination or participation in proceedings covered by the anti-discrimination statutes. I feel the Texas Army National Guard, broke and continues to break the laws regarding discrimination and harassment.**

40.) Did you experience any adverse action? **I was disciplined and fined, without a hearing, or fact finding investigation. I was given a letter stating they were going to Bar me from Re-Enlisting again. I have had files missing during inspections, equipment, that was inventoried missing, they have called me Niger, but yet I am supposed to turn my back on the discrimination. I have nor recourse given the Texas Army National Guards views on how to manage or investigate a discrimination complaint. Just like myself I feel the harassers had a vendetta for Mr. Boswell. To move a individual out of the workplace, limit his access to other full time employees, segregate Mr. Boswell, and discuss, his religious beliefs, for pleasure, is truly DISCRIMINATION. The Texas Army National Guard, is obligated to undertake corrective actions, and discipline those found at fault. The Texas Army National Guard, has not taken exception to their own guidelines regarding discrimination, harassment, they just hide the facts.**

Clinton K. Payne

Clinton K. Payne, II.

Subscribed and sworn to before me by said affiant, a notary public in and for _____county, Texas, this _____day of March 2000.

My commission expires:

Notary Public for the State of Texas
County of _____

ROTC

Major James Boswell

December 15, 1986

Major James Boswell came into the office a few minutes before noon. He did not have an appointment, but indicated that he had a matter of utmost urgency to discuss with me. Major Boswell told me that he had discovered the Army ROTC PMC, LTC Bruce Stacy, was guilty of "criminal" misuse of cadet funds. Boswell said that he had confronted LTC Stacy with these and other allegations of improper actions by Stacy. As a result, Boswell told me that he was being subjected to a 15-6 investigation on "bogus charges" brought by LTC Stacy. Boswell said that a cover-up was underway and that the Army would do whatever was necessary to protect LTC Stacy.

Major Boswell presented me with a record of cadet fund expenditures. I was unaware of the existence of the cadet fund and was dismayed to learn that the fund was being maintained in an account in a local bank. I was surprised to learn that Boswell had already charged Stacy with fund misuse through the Army's Inspector General Office. I asked Boswell why he had not contacted me earlier, and I pointed out that if corrections in fund procedures were warranted, they could have been accomplished internally with little fanfare or turmoil. I further told him that now that Army investigations were underway there was little I could do except let Army procedures run their course. Boswell didn't seem to understand my question or what I was telling him. He indicated that he wanted me to inform the Army that the University planned to investigate his allegations against LTC Stacy and that he (Boswell) was not to be removed from duty. I explained that I would certainly investigate the allegations, but that I could not intervene in on-going Army investigations. I told him that this was now an Army matter that had to be handled by appropriate Army procedures. Boswell reiterated that a cover-up was underway and that an effort was being made to prevent him from doing his duty to the cadets. He insisted that it was necessary for the University to insure that he stay on duty so that he could reveal the extent of misconduct by LTC Stacy and other Army personnel. Our conversation became circular, and I told him that I would have further conversations after I had conducted a preliminary investigation.

Later that day I examined the cadet fund records. I found no evidence of misuse. I was concerned that there did not appear to be procedures insuring that cadets had appropriate input into decisions concerning fund expenditures. I called Stacy and told him that such procedures were to be established. he assured me that these procedures were now in place. I further informed him that cadet funds were to be deposited into a university account under the control of the TCU controller (as is required for all TCU organizations). This was promptly accomplished.

My initial conclusion was that Boswell had grossly overstated the problems associated with the cadet fund.

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JAMES D. BOSWELL, Plaintiff VS. TEXAS CHRISTIAN UNIVERSITY, CHANCELLOR DR. WILLIAM E. TUCKER, and DEAN DR. MICHAEL D. McCRACKEN, Defendants.	§ § § § § § § § § § §	NO. 4:98-CV-0168-Y

STIPULATIONS OF FACT

NOW COMES Defendant, Texas Christian University ("TCU") and in response to discovery requests from Plaintiff, James D. Boswell, makes the following Stipulations of Fact to be admissible as evidence in the above proceeding.

I.

The ROTC Budget for 1997 - 1998 was $32,100.00 and included monies for secretarial support, student helper pay, supplies, and travel.

II.

TCU received for the 1997 - 1998 school year federal dollars totalling $6,119,000.00, comprised generally of tuition or financial aid to students and research grants.

DEPARTMENT OF THE ARMY
US ARMY CLAIMS SERVICE
OFFICE OF THE JUDGE ADVOCATE GENERAL
4411 LLEWELLYN AVENUE
FORT GEORGE G MEADE MARYLAND 20755-5360

REPLY TO ATTENTION OF:

FEB 2 3 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Western U.S. Torts Branch
00-C01-T037

Mr. James D. Boswell
414 Morrison Drive
Euless, Texas 76039-5000

Dear Mr. Boswell:

This notice constitutes final administrative action on your claim against the United States for $1,000,000 for personal injuries allegedly suffered by you beginning in 1986 when you were an Associate Professor of Military Science on active duty at Texas Christian University, through the period when you were a civilian technician with the Texas Army National Guard ending in 1999.

Your claim is denied. From 1986 through April 12, 1989, when you were discharged, you were an active duty soldier. The United States is not liable to service members under the Federal Tort Claims Act (FTCA), Title 28, of the United States Code, Sections 2670-2680, for injuries that arose "out of or in the course of activity incident to service." Feres v. United States, 340 U.S. 135 (1950). Therefore, the claim is barred to the extent it involves any alleged negligence of the United States that occurred while you were on active duty.

During the period of November 1992 through February 5, 1999, when you were terminated from federal civilian service, you were a civilian technician working for the Texas Army National Guard. As such, your exclusive remedy for the injuries you allegedly sustained from unjust personnel actions for that period is the Civil Service Reform Act of 1978, Title 5, of the United States Code, Section 2301.

Under the FTCA, a claimant has two years to file a claim. This is a jurisdictional requirement that may not be waived. The two-year statute of limitations begins on the date that a claimant becomes aware or should have become aware of the alleged injury and its cause.

Based upon the information you provided, it appears that the incidents giving rise to the majority of your claim began in 1986 and ended with your discharge from active duty on April 12, 1989. Your claim was filed on or about December 17, 1999. In your case, therefore, the limitation period began on April 12, 1989, the date you allegedly were wrongfully discharged. Accordingly, the part of the claim that involves wrongful termination from active duty in 1989 was not filed within two years of its accrual and is time-barred. Title 28, of the United States Code, Section 2401(b).

I am required by regulation to inform you that if you are dissatisfied with the action taken on your claim, you may file suit in an appropriate United States District Court no later than six months from the date of mailing of this letter, or your remedy will be forever barred. This is not intended to imply that any such suit, if filed, would be successful.

Sincerely,

John H. Belser, Jr
Colonel, U.S. Army
Chief, Tort Claims Division

JAMES D. BOSWELL
414 Morrison Drive
Euless Texas, 76309
JBosRanger@aol.com

Honorable George Bush
P.O. Box 12428
Austin TX 78711

Dear **Governor Bush:**

This is a leadership challenge and straight talk about advanced citizenship, character, protecting, in the fiercest way, our youth and the disadvantaged from abuse. Texas record on education and effective management of the Texas National Guard is controversial. My goal is that the public is genuinely moved to take part in a rewarding experience and an endeavor to unfold the truth. I am available for interview.

Modeled from federal statutes, Texas Education Code, Sec 61.001, purpose is: (a) to provide leadership and coordination ... for institutions and governing boards to the end that Texas may achieve excellence for college education of its youth and (b) in the exercise of its leadership role, the Texas Higher Education Coordinating Board ... shall be an advocate ... of sufficient authority ... to the benefit of the students ... and ... to citizens ... The code addresses compliance with state and federal guidelines and undertakings with Private Universities. Arguably, the Board has discipline, investigative and accreditation authority. Similarly, the Governor has authority over the Texas National Guard.

The interests of agency heads, federal and state, are accorded more weight in opposition to that of "an educator" or "a citizen soldier" when moral inequity is thrown into the balance. I witnessed violation of policy to include an officer showing pornography video in a Texas National Guard Armory. The Adjutant General directed investigation. A Navy Captain (investigator) found reprisal 9/27/97 but the finding was withheld until 04/15/99, three months **after involuntary termination** on 5 February 1999. Previously I submitted a FOIA request 01/08/98 and on 04/08/98, I respectfully requested the Governor's intervention: "If public scrutiny were involved, it may spark criticism of the Texas National Guard. As our Governor-in-Chief, you have a significant interest in the uniformed serviceman, about education, the work ethic, the leadership, and about honesty". Had I been armed with the reprisal and recommendation that the Army National Guard Colonel be disciplined, this would have benefited my petition to the Army Board and to two special promotion selection boards to Lieutenant Colonel. Dual hatted, as a sergeant and education school manager, I filed evidence of misrepresentation and fraud for an unsatisfactory showing - an agency finding that Texas Army National Guard soldiers, enrolled for military education, achieved only 50 % success rate. Comparably to the 52 states, Texas military education rating was last. Concerning reprisal, the catch 22 is protection under 5 U.S.C. 2302(b)(8) does not apply. The Office of Special Counsel 09/10/99 stated OSC and MSPB do not have authority to enforce 5 U.S.C. because the National Guard is not a federal entity and the Adjutant General is not a federal employee. The Guard receives tax payer funds: Texas Christian University (TCU) receives about $ 6,000,000, annually. I hope that the legislatures recognize the reprisal, the disenchantment and inconsistency. I request that this affidavit be embraced by proactive accountability, and be part of the legislative record.

The retaliation in the Texas National Guard is a reprint of the reprisal found by the DOD Inspector General. I was an Army Major employed at Texas Christian University as the Assistant Professor of Military Science in an ROTC assignment. 1034 U.S.C. Investigation reveals I reported sexual assault, misapplication of fiduciary property, and other impropriety. What happened after each of the reprisal actions was intolerable misconduct, humiliation, betrayal, the opposite of goodness. Therefore, I conclude that the above mentioned institutions' need incentive to make the correct choices. Justification of a weak Texas Constitution Government does not hold water. The University and Governing Boards violate their own charters. It is misrepresentation that the Texas Guard and Texas Education program of higher education learning are projected as role models. I respectfully provide evidence to the contrary.

In the military we live by different rules. We depend on each other. After disclosure of the scandal at TCU, I lost my active duty career and performed in the Texas National Guard for seven consecutive years as a Sergeant, without promotion. For reporting the corruption at TCU, I was partially saved by U.S. Senator Sam Nunn in 1996. "Mr. Boswell's case merits careful review and careful consideration in light of the strong public policy against whistle blower retaliation". The Secretary of the Army absorbed some responsibility, restored my rank to Major and retired me retroactively with back pay but at the time there was no evidence of conspiracy. For the second reprisal, my Guard career ended under the Governor's leadership as Commander in Chief. Cumulatively, the events have the markings of a survival story and now a "Sting" due to the intensity of the cover-up, and newly discovered evidence, an affidavit 03/08/99: "I regret, even though I was under orders, that I was a participant in the University's and Army Conspiracy ... I am committed to just and positive action". Due to my loss of social and economic status, deprivation of liberty to my family, I have the utmost respect for POWS, Senator John McCain, Congressman Sam Johnson and Rancher Tom Lancaster. I am humbled by Mr. Lancaster's acclaim: "I appreciate Mr. Boswell's courage and ability to help us survive, under perilous conditions (lost, high mountains, rugged cannon, inclement weather, miserable circumstances). I give credit to the Army survival training program. Now Jim needs help. He has a Masters in Public Administration".

Self reliance was my mistake. My inspiration was for trust and justice. I am loosing to power, special interest but my sense of honor and self respect matures. I reported that an Army ROTC Sergeant Major assigned at TCU had sexual intercourse with **my student**, according to her, without her consent. I provided an audit of over **$** 14,000 of the misapplication of the **youth's funds** to the University Dean. I objected to **minority discrimination**. My hurt is insignificant compared to that of the students' and to one brave black employee who tried to help me. He disappeared, vanished, -- a situation the University failed to disclose. The employee was two years short of a federal retirement. He was unfairly intimidated. Ten students' grades were changed. Students were briefed on the University's version of activities. Military officers escorted my daughter and I to the local hospital. I reported for psychiatric evaluation. Media was not involved; but I wish it was. The truth has never been told! Vindication is in order.

Our country is ready to endorse "reform". My experience is that Governor Bush can stand up for himself, but he has not stood up for me. Total vindication will prove me wrong. Our leadership must impose greater responsibility for actions morally wrong, intended to do harm. Men and women service members, students, citizens, veterans and recruits deserve something different, more pure, Christian, and honorable. I trust that you will initiate a Congressional hearing, a DOD IG follow up investigation, and initiation and endorsement of an Army Board Action as an effort to restore faith.

I lost the opportunity to pursue a successful career at the highest level; however, going from Major to Sergeant maybe the best leadership experience for what is in store. My American dream is to be an executive in Government. I am already blessed by a lovely wife and two precious daughters and have served in five Army Divisions. Army Rangers are expected to go through tough times: My faith in God and our Country leadership continues. I look forward to receiving a positive reply, and remain

your faithful servant,

James D. Boswell

JAMES D. BOSWELL

Hereby grants release in accordance with privacy regulations.
Subscribed and sworn to before me by said affiant, a notary public in and for TARRANT County, Texas, this 18th day of February 2000.
My commission expires: 10-13-02

Natalie R. Vaughan

Notary Public for the State of Texas County of TARRANT

NATALIE R. VAUGHAN
Notary Public, State of Texas
My Commission Expires 10-13-02

JAMES D. BOSWELL
414 Morrison Drive
Euless Texas. 76309
8 April 1998

GOVERNOR
STATE OF TEXAS
Austin, Texas 78701

Dear **Governor Bush:**

Thank you for the overwhelming Texas Guard leadership who responded candidly and courageously with recommendations and endorsements in my behalf in correcting the record before a series of Army Boards. Unfortunately, this trend of support shifted. I respectfully request your inquiry and intervention concerning the attached complaint. If public scrutiny was involved, it may spark criticism of the Texas National Guard. As our Governor-in-Chief, you have a significant interest in the uniformed serviceman, the work ethic, the leadership, and about honesty.

In a Texas National Guard Armory, I witnessed and reported an officer showing pornography, an officer selling Mary Kay products, and inappropriate investigating procedures concerning the wreckage of an M-1 Tank. The public and children enter state facilities routinely. In reality their visits may be for just seconds, enough time to give a message to dad and witness scandal.

Today, our Texas Guard's military justice system and discipline are compromised: This is because the officer showing pornography is in command. Soldiers who have committed this same offense were requested to resign or face court martial proceedings.

Five officers are accountable. Major Gary Owens showed the sex video. He is now the Battalion Commander of 2d Battalion 112th Armor. Lieutenant Colonel Shelby Little sold Mary Kay products and took action to fire complainant. He now serves as Assistant Chief of Staff, Adjutant General Department. Colonel James Bisson, the Commander of the 2d Brigade, Colonel Patterson, the Chief of Staff of 49th Armored Division, and Colonel Godwin, Chief of Staff of the Texas Adjutant General Department, collectively, have created a reprisal and hostile environment. Army Regulation 623-105, Section IV, paragraph 5-30b (1) (a) (b) states if rating officials have substantial findings against them from an official investigation or lack objectivity or fairness, they become unqualified to rate subordinates.

The Chief of Staff of the 49 Armored Division made the decision that my grievance be denied (encl). Why has the leadership covered up a violation of a federal statute? I have lost respect for my civil service chain of command. Denial to my grievance is an another attempt to sweep criminal activity under the rug.

This is not the first time that I have suffered reprisal for reporting misconduct. My first bad experience was when a Texas National Guard field grade officer failed to reveal the truth. He conspired with Texas Christian University (TCU) and the Army chain of command to wrongfully remove me from the ROTC assignment. They were successful. The Adjutant General failed to conduct an inquiry. In 1989, I was discharged from the Army after fifteen years and nine months; however, on May 21, 1997, the Secretary of the Army documented reprisal and declared the discharge null and void. A wrongful discharge may have been avoided and a promising career may have been salvaged had the Texas National Guard Adjutant General responded to my cry for intervention. The discharge was caused because I reported that a female recruit was sexually harassed by an Army ROTC Sergeant Major (SGM) employed at Texas Christian University. According to her statement she had sexual intercourse with the SGM without her consent.

On January 8, 1998, a FOIA request was sent to the Texas Adjutant General requesting release of the findings of an Article 138 complaint and an investigation conducted under Army Regulation 15-6, initiated in September 1997. The leadership's recent actions are characterized by delay and denial, give an appearance of bad faith and appear to be designed to stonewall the investigations and to obstruct justice. Since I entered the Texas Guard in 1992 I have witnessed mostly outstanding leadership, but also unfairness by a handful of officers. Their conduct over shadows the reputation of an honorable institution led by three consecutive caring leaders. As a result of the actions imposed against me during my career in the military, I recently filed a federal lawsuit in the Northern Federal District Court of Texas.

Mr. Bush, I have utmost confidence that you will give serious consideration to my petition and look forward to receiving a positive reply, and remain

your faithful civil servant,

James Boswell

JAMES D. BOSWELL

encl

U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

September 10, 1999

Mr. James D. Boswell
414 Morrison Drive
Euless, TX 76039

Re: OSC File No. MA-99-1931

Dear Mr. Boswell:

This will acknowledge receipt of and respond to your complaint to the Office of Special Counsel. You allege that officials in the Texas Army National Guard have engaged in actions that constitute prohibited personnel practices.

The Office of Special Counsel is authorized to investigate allegations of prohibited personnel practices and activities prohibited by civil service law, rule, or regulation. 5 U.S.C. §§ 1214(a)(1)(A), 1216(a) and 2302(b). Based on our evaluation of the facts and law applicable to your circumstances, as detailed in this status report, we have made a preliminary determination to close the file in this matter. Our factual and legal determinations follow.

You allege discrimination based on race and religion in violation of 5 U.S.C. § 2302(b)(1)(A) and reprisal for whistleblowing activities protected under 5 U.S.C. § 2302(b)(8). The Special Counsel presents allegations of prohibited personnel practices to the Merit Systems Protection Board (the Board) which has the authority to hear and adjudicate such matters. On October 20, 1998, the Board issued a decision in McVay v. Arkansas National Guard, 80 M.S.P.R. 120 (1998), in which a National Guard Technician alleged that he had been the victim of a prohibited personnel practice. The Board found that while the employee's appeal was within the Board's jurisdiction there was no effective relief that could be granted to the employee because a Board order is not enforceable against the National Guard. As a basis for the Board's decision that it had no authority to grant relief on the employee's allegation of a prohibited personnel practice, the Board cited its finding in an earlier decision concerning a National Guard Technician [Melendez v. Puerto Rico National Guard, 70 M.S.P.R. 252 (1996)]. In Melendez, the Board found that while it had the authority to enforce its orders against any Federal agency or employee, the National Guard is not a federal entity and an Adjutant General is not a federal employee. Therefore, the Board found that it had no authority to enforce its decision in the case. Consequently, because the Board has no authority to order any corrective action for a National Guard

Technician, and because the Special Counsel presents allegations of prohibited personnel practices to the Board for adjudication and the necessary corrective action, we have no basis for further inquiry into the matter you complain about as possible violations of sections 2302(b)(1)(A) and (b)(8).

In addition, the Office of Special Counsel does not have the authority to investigate allegations of prohibited personnel practices that may have occurred while you were a member of the military. In your documentation, we note that you exercised the rights afforded to members of the military who claim whistleblower reprisal. For purposes of our authority, an employee is defined under 5 U.S.C. § 2105, as an individual who is appointed in the civil service. Under 5 U.S.C. § 2101, the civil service includes, in part, all appointive positions in the executive branch of the Government, except positions in the uniformed services. The uniformed services include the armed forces of the Army, Navy, Air Force, Marine Corps, and Coast Guard. Thus, we would have no basis for further action with respect to issues occurring while you were in the military service.

Accordingly, for the reasons stated above, we are closing the file. If you have questions regarding this matter, you may contact me at 202-653-7188 or 1-800-872-9855.

Sincerely,

Penney M. Moy
Complaints Examiner
Complaints Examining Unit

PMM/pmm

U. S. Department of Veterans Affairs
VA Regional Office
125 South Main Street
Muskogee, OK 74401

January 14, 2000

SS-459-92-2709
BOSWELL, J. D.

MR JAMES D BOSWELL
414 MORRISON DR
EULESS TX 76039

Dear MR BOSWELL:

Your request for waiver of your education debt has been approved.

You are not significantly at fault in the creation of this debt. You were released from the army on an involuntary basis. In an effort to rebuild your life and be in a better position to support your family, you entered school. The army then decided that there was an error on their part and you were reinstated. The education funds that were paid to you were charged as an overpayment against you.

The purpose of the funds at that time was to assist you in obtaining an education. You used those funds for that purpose , in good faith. You could not possibly have known that the army would reverse their decision and you had no control over the situation. We do not have complete financial data from you. However, due to the circumstances, the ability to pay the debt would not be a deciding factor. It would be against equity and good conscience to pursue collection of this debt which was not of your doing and over which you no control at all. Your request for waiver is granted.

You will receive additional correspondence related to this waiver in a few weeks from the Debt Management Center located in St. Paul, Minnesota.

Sincerely yours,

Charles Colbert
CHARLES COLBERT
Finance Officer

CERTIFICATE OF PROOF OF SERVICE IN THE SUPREME COURT OF THE UNITED TATES in

JAMES D. BOSWELL, Individually and on behalf of all others similarly situated; VANESSA LACE BOSWELL, Individually and on behalf of all others similarly situated; SHAUNA MROSKI, Individually and on behalf of all others similarly situated

Plaintiffs-Appellants-Petitoner

v.

BOARD OF TRUSTEES TEXAS CHRISTIAN UNIVERSITY (individual members (in their official capacities only); GEORGE BUSH, Governor, individual and official capacity; DANIEL JAMES, Major General, Adjutant General of Texas, LOUIS CALDERA, Secretary of the Army, National Guard Bureau Agency,

Defendants-Appellees-Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH

USDC No. 4:00 - CV-1526-Y, Fifth Circuit N0 00-11360 and USDC No. 4:98-CV-168-Y No-00-10698

I do declare this Appendix to writ of certiorari was served by certified priority mail, return receipt requested to Texas Christian University Defendants is Richard De Berry, McDonald and Sanders, 1300 Continental Plaza, 777 Main Street, Ft Worth Texas 76102 (817 336 8651) and for United States Defendants is Wayne Hughes, Jr. Assistant United States Attorney, 801 Cherry St. Suite 1700, Ft Worth Tx 76102-6897 (817 252 5200), and for Texas Government employees, Mr. Peter J. Strelitz, Capitol Station, PO Box 12548, Austin Texas, 78711-2548 (512 463 2120) on this date 7 December 2001. I declare under the penalty of perjury that the forgoing is true.

James Boswell

James Douglas Boswell, Pro Se
414 Morrison Dr.
Euless TX 76039
817 358 9911 fax 817 358 0291

(4)

Supreme Court, U.S.
FILED

011103 DEC 8 2001

OFFICE OF THE CLERK

AMENDMENT TO APPENDIX

FOR THE **PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT** IN THE SUPREME COURT OF THE UNITED STATES

JAMES D. BOSWELL, Individually and on behalf of all others similarly situated; VANESSA LACE BOSWELL, Individually and on behalf of all others similarly situated; SHAUNA MROSKI, Individually and on behalf of all others similarly situated
Plaintiffs-Appellants-Petitioner

v.

BOARD OF TRUSTEES TEXAS CHRISTIAN UNIVERSITY (individual members (in their official capacities only); GEORGE BUSH, Governor, individual and official capacity; DANIEL JAMES, Major General, Adjutant General of Texas, LOUIS CALDERA, Secretary of the Army, National Guard Bureau Agency,
Defendants-Appellees-Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH

USDC No. 4:00 - CV-1526-Y, Fifth Circuit N0 00-11360 and
USDC No. 4:98-CV-168-Y No-00-10698

Per the court's instructions the District Court decisions are provided in the form of this amendment to the appendix to petition for a writ of certiorari to the U.S. Court of Appeals for the Fifth Circuit.

James Boswell

James Douglas Boswell, Pro Se
414 Morrison Dr.
Euless TX 76039
817 358 9911 fax 817 358 0291

30pp

N0 00-11360
In The U.S. Court of Appeals
For Fifth Circuit

JAMES DOUGLAS BOSWELL, VANESSA LACE BOSWELL, SHAUNA MROSKI, Individually and on behalf of all others similarly situated

PLAINTIFFS -APPELLANTS

VS

BOARD OF TRUSTEES TEXAS CHRISTIAN UNIVERSITY, Individual members (in their official capacity only); GEORGE BUSH, Governor of Texas, individual and official capacity; DANIEL JAMES, Major General, Adjutant General of Texas; LOUIS CALDERA, Secretary of the Army, National Guard Bureau Agency

DEFENDANTS - APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TX

FORT WORTH USDC No. 4:00 - CV-1526-Y

APPELLANT'S RECORD EXCERPTS FOR APPELLANTS BRIEF IN RESPONSE TO THE NORTH DISTRICT COURT DISMISSAL WITH PREJUDICE

James Douglas Boswell, Vanessa Boswell,
and Shauna Mroski
Pro Se: 414 Morrison Dr. Euless TX 76039
817 358 9911
Plaintiffs - Appellants
Submitted: 5 February 2001

APPEAL CLOSED

U.S. District Court
Northern District of Texas (Fort Worth)

CIVIL DOCKET FOR CASE #: 00-CV-1526

Boswell v. Board of Trustees TC, et al
Assigned to: Judge Terry R Means
Demand: $0,000
Lead Docket: None
Dkt# in other court: None

Filed: 09/05/00

Nature of Suit: 440
Jurisdiction: Federal Question

Cause: 42:1983 Civil Rights Act

JAMES D BOSWELL, Indiviually and on behalf of all others similarly situated
plaintiff

James D Boswell
817/358-0291 FAX
[NTC pse] [PRO SE]
414 Morrison Dr
Euless, TX 76039
USA
817/358-9911

VANESSA LACE BOSWELL, Individually and on behalf of all others similarly situated
plaintiff

Vanessa Lace Boswell
[NTC ret] [PRO SE]
414 Morrison Drive
Euless, TX 76039
USA
817/358-9911

SHAUNA MROSKI, Individually and on behalf of all others similarly situated
plaintiff

Shauna Mroski
[NTC pse] [PRO SE]
414 Morrison Dr
Euless, TX 76039
USA
817/358-9911

v.

BOARD OF TRUSTEES TEXAS CHRISTIAN UNIVERSITY, individual members (in their official capacities only)
defendant

Richard C DeBerry, Attorney at Law
817/334-0271 FAX
[COR LD NTC ret]
McDonald Sanders
Continental Plaza
777 Main Street
Suite 1300
Fort Worth, TX 76102
USA
817/336-8651

Certified a true copy of an instru
on file in my office on 12/6/00
Clerk, U.S. District Court,
Northern District of Texas
By _____ Dep

Docket as of December 6, 2000 11:21 am

GEORGE BUSH, Governor, individual and official capacity defendant	Peter J Strelitz, Attorney at Law 512/320-0667 FAX [COR LD NTC ret] Attorney General of Texas General Litigation Div -019 PO Box 12548 Capitol Station Austin, TX 78711-2548 USA 512/463-2100
DANIEL JAMES, Major, Adjutant General of Texas defendant	Peter J Strelitz, Attorney at Law (See above) [COR LD NTC ret]
LOUIS CALDERA, Secretary of the Army, National Guard Bureau Agency defendant	R Wayne Hughes, Jr, Attorney at Law 817/978-3368 FAX [COR LD NTC ret] US Attorney's Office Burnett Plaza 801 Cherry Street Suite 1700 Fort Worth, TX 76102 USA 817/252-5200

Proceedings include all events.
4:00cv1526 Boswell v. Board of Trustees TC, et al

APPEAL

CLOSED

JAMES D BOSWELL, Indiviually and on behalf of all others similarly situated; VANESSA LACE BOSWELL, Individually and on behalf of all others similarly situated; SHAUNA MROSKI, Individually and on behalf of all others similarly situated

plaintiff

v.

BOARD OF TRUSTEES TEXAS CHRISTIAN UNIVERSITY, individual members (in their official capacities only); GEORGE BUSH, Governor, individual and official capacity; DANIEL JAMES, Major, Adjutant General of Texas; LOUIS CALDERA, Secretary of the Army, National Guard Bureau Agency

defendant

9/5/00	1	1	COMPLAINT (15+) filed; Filing Fee $ 150.00 Receipt # 34367 (dld) [Entry date 09/06/00] CLOSED
9/5/00	2	7/19	SUMMONS(ES) issued for defendant Individual Members of the Board of Trustees, Texas Christian University (official capacity only) (dld) [Entry date 09/06/00] [Edit date 09/06/00]
9/5/00	3	7/19	SUMMONS(ES) issued to Asst Atty Gen Wayne Hughes Jr for the Secretary of the Army, Louis Caldera (dld) [Entry date 09/06/00]
9/5/00	4	720	SUMMONS(ES) issued to Asst Atty General Attn: Petrer J Strelitz (dld) [Entry date 09/06/00]
9/25/00	5	738	MOTION by defendant George Bush, defendant Daniel James to dismiss (15+pgs) (fba) [Entry date 09/26/00]
10/16/00	6	753	MOTION with memorandum in support by plaintiff James D Boswell, plaintiff Vanessa Lace Boswell, plaintiff Shauna Mroski to proceed in forma pauperis and veteran status (7pgs) (fba) [Entry date 10/17/00]
10/16/00	7	760	MOTION with memorandum in support by plaintiff James D Boswell, plaintiff Vanessa Lace Boswell, plaintiff Shauna Mroski for investigation of the alleged unethical conduct of Attorney Robert Ginsberg pursuant to LCrR 57.8(e) and possible prejudice to each of the related law suits 4:98-CV-68-Y, 4-00-CV-1440-E, and 4:00-CV-1526-Y (4pgs) (fba) [Entry date 10/17/00]
10/16/00	8	764	MOTION with memorandum in support by plaintiff James D Boswell, plaintiff Vanessa Lace Boswell, plaintiff Shauna Mroski for Disqualification of Law Firm McDonald Sanders (4pgs) (fba) [Entry date 10/17/00]
10/16/00	9	768	MOTION with memorandum in support by plaintiff James D Boswell, plaintiff Vanessa Lace Boswell, plaintiff Shauna Mroski for transfer of venue (4pgs) (fba) [Entry date 10/17/00]
10/16/00	10	770	MOTION with memorandum in support by plaintiff James D Boswell, plaintiff Vanessa Lace Boswell, plaintiff Shauna Mroski for recusal of Honorable Judge Means (15+pgs) (fba) [Entry date 10/17/00]
10/16/00	11	795	MOTION with memorandum in support by plaintiff James D Boswell, plaintiff Vanessa Lace Boswell, plaintiff Shauna Mroski for Army Major Jim Boswell(retired) to be the spokesman during conference calls for each of the Plaintiffs Jim Boswell, Vanessa Boswell, and Shauna Mroski(4pgs) (fba) [Entry date 10/17/00]

11/3/00 12 799 MOTION by defendant Board of Trustees TC to dismiss plaintiffs case (3pgs) (fba) [Entry date 11/06/00]

11/13/00 13 802 MOTION by defendant Louis Caldera to extend time to answer, plead, or otherwise respond (3pgs) (fba) [Entry date 11/14/00]

11/17/00 14 805 ORDER denying [10-1] motion for recusal of Honorable Judge Means (signed by TRM) Copies to counsel: 11/17/00 Page(s) 1 (pdm)

11/17/00 15 807 ORDER denying [9-1] motion for transfer of venue (signed by TRM) Copies to counsel: 11/17/00 Page(s) 1 (pdm)

11/17/00 16 809 ORDER granting [5-1] motion to dismiss; all claims in this cause dismissed with prej; pltfs. cautioned that they may be sanctioned if they make any future attempts to litigate these claims in this Court (signed by TRM) Copies to counsel: 11/17/00 Page(s) 2 (pdm)

11/17/00 17 812 Final JUDGMENT for Board of Trustees TC, George Bush, Daniel James, Louis Caldera against James D Boswell, Vanessa Lace Boswell, Shauna Mroski:...all claims dismissed with prej; all costs under 28 USC 1920 shall be borne by pltf. (signed by TRM) Copies to counsel: 11/17/00 Page(s): 1 (pdm)

11/17/00 -- Case closed (pdm)

11/27/00 18 814 MOTION by plaintiff James D Boswell, plaintiff Vanessa Lace Boswell, plaintiff Shauna Mroski for Expedited Hearing and expedited processing of the case so that this court's ruling and abuse of discretion may be considered in the election 2000 (1pg) (fba) [Entry date 11/28/00]

11/27/00 19 815 MEMORANDUM by plaintiff James D Boswell, plaintiff Vanessa Lace Boswell, plaintiff Shauna Mroski in support of [18-1] motion for Expedited Hearing and expedited processing of the case so that this court's ruling and abuse of discretion may be considered in the election 2000 (7pgs) (fba) [Entry date 11/28/00]

11/27/00 20 818 MOTION by plaintiff James D Boswell, plaintiff Vanessa Lace Boswell, plaintiff Shauna Mroski to consider inequitable conduct, voting intimidation, and obstruction to justice in the election 2000 (1pg) (fba) [Entry date 11/28/00]

11/27/00 21 823 MOTION by plaintiff James D Boswell, plaintiff Vanessa Lace Boswell, plaintiff Shauna Mroski for reconsideration of [17-1] judgment order, [16-1] order, [15-1] order, [14-1] order (1pg) (fba) [Entry date 11/28/00]

CLOSED

11/27/00	22	SJK	APPENDIX by plaintiff James D Boswell, plaintiff Vanessa Lace Boswell, plaintiff Shauna Mroski in support of [1-1] complaint (15+pgs) (fba) [Entry date 11/28/00]
11/30/00	23	SJK	ORDER denying [21-1] motion for reconsideration of [17-1] judgment order, [16-1] order, [15-1] order, [14-1] order, denying [20-1] motion to consider inequitable conduct, voting intimidation, and obstruction to justice in the election 2000, denying [18-1] motion for Expedited Hearing and expedited processing of the case so that this court's ruling and abuse of discretion may be considered in the election 2000 (signed by TRM) Copies to counsel: 11/30/00 Page(s) 1 (fba)
12/1/00	24	SJK	NOTICE OF APPEAL by plaintiff James D Boswell, plaintiff Vanessa Lace Boswell, plaintiff Shauna Mroski re [21-1] motion for reconsideration of [17-1] judgment order, [16-1] order, [15-1] order, [14-1] order, [20-1] motion to consider inequitable conduct, voting intimidation, and obstruction to justice in the election 2000, [19-1] support memorandum, [18-1] motion for Expedited Hearing and expedited processing of the case so that this court's ruling and abuse of discretion may be considered in the election 2000, [17-1] judgment order, [16-1] order, [15-1] order, [14-1] order Payment: 105.00 Receipt # 35141; no hearing/trl held; ctj (15+pgs) (fba) [Entry date 12/04/00]
12/4/00	--		Notice of appeal and certified copy of docket to USCA: [24-1] appeal along with a transmittal letter. (csw)
12/6/00	--		Transmitted record on appeal to U.S. Court of Appeals: [24-1] appeal consisting of Vol I-IV of case papers which includes cert cy of docket entries; along with a transmittal letter. (eac)

ORIGINAL

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
NOV 17 2000
CLERK, U.S. DISTRICT COURT
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JAMES BOSWELL, ET AL. §
§
VS. § CASE NO. 4:00-CV-1526-Y
§
GEORGE BUSH, ET AL. §

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

Pending before the Court is Defendants' Motion to Dismiss, filed September 25, 2000 [doc. # 5-1]. Having carefully considered the motion, the Court finds that the motion has merit and should be GRANTED.[1]

The Court finds that the complaint in the above-styled and numbered cause is virtually identical to the complaint in cause no. 4:98-CV-168-Y, which was dismissed with prejudice by this Court on January 29, 1999. The Court denied Plaintiffs' motion to reopen that cause on May 12, 2000. Plaintiffs' claims are thus barred by the doctrine of *res judicata*. *See Commercial Box & Lumber Co. v. Uniroyal, Inc.*, 623 F.2d 371, 373 (5th Cir. 1980). Additionally, the Court concurs with Judge Mahon's recent assessment that "Plaintiffs' pleadings are a morass of garbled text filled with unconnected facts and legalese, ambiguously referring to multiple, unrelated causes of action." *See Boswell v. Bush*, 4:00-CV-1440-E (Order granting Defendant's motion for judgment on the pleadings, Sept. 19, 2000,

[1]Plaintiffs did not file a response to the motion to dismiss. Rather, they filed a 20-page motion for recusal, which the Court has denied by order signed this same day.

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NOV 17 2000 809

p. 5).[2] It is impossible for the Court to attend meaningfully to Plaintiffs' pleadings when the pleadings are unintelligible.

Therefore, it is ORDERED that Defendants' motion to dismiss is GRANTED. All claims in the above-styled and numbered cause are hereby DISMISSED WITH PREJUDICE. Plaintiffs are cautioned that they may be sanctioned if they make any future attempts to litigate these claims in this Court.

SIGNED November 17, 2000.

Terry R. Means

TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

TRM/val

---

[2]The reason Plaintiffs filed these two identical suits within 30 days of each other is beyond the Court's comprehension.

ORIGINAL

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
NOV 17 2000
CLERK, U.S. DISTRICT COURT
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JAMES BOSWELL, ET AL. §
§
VS. § CASE NO. 4:00-CV-1526-Y
§
GEORGE BUSH, ET AL. §

ORDER DENYING PLAINTIFFS' MOTION FOR TRANSFER OF VENUE

Pending before the Court is Plaintiffs' "Motion for Transfer of Menu [sic]", filed October 16, 2000 [doc. # 9-1]. Having carefully considered the motion, the Court finds that the motion is wholly without merit and should be DENIED.

Under 28 U.S.C. § 1404(a), a district court may transfer a civil action "for the convenience of parties and witnesses, in the interest of justice, . . . to any other district or division where it might have been brought." Plaintiffs have not explained how a transfer to another venue would be convenient for the parties or witnesses, nor have they alleged that there is another venue where this action might have been brought.

Therefore, it is ORDERED that Plaintiff's motion for transfer of venue is DENIED.

SIGNED November 17, 2000.

Terry R. Means
TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

TRM/val

15

ENTERED ON DOCKET
NOV 17 2000
U.S. DISTRICT CLERK'S OFFICE

ORIGINAL

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
NOV 17 2000
CLERK, U.S. DISTRICT COURT
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JAMES BOSWELL, ET AL. §
§
VS. § CASE NO. 4:00-CV-1526-Y
§
GEORGE BUSH, ET AL. §

ORDER DENYING PLAINTIFFS' MOTION FOR RECUSAL

Pending before the Court is Plaintiffs' motion for recusal, filed October 16, 2000 [doc. # 10-1]. Having carefully considered the motion, the Court finds that the motion should be DENIED.

Under 28 U.S.C. § 455, a judge shall disqualify himself in certain specified circumstances and "in any proceeding in which his impartiality might reasonably be questioned." Plaintiffs' argument that a recusal is justified is wholly without merit. The alleged bias of a judge "must result from an extrajudicial source; a judge's prior adverse ruling is not sufficient cause for recusal." *United States v. Studley*, 783 F.2d 934, 939 (9th Cir. 1986). Additionally, the fact that the undersigned was appointed by the father of defendant George W. Bush is not a sufficient allegation of impartiality under section 455. *See United States v. Gordon*, 974 F.2d 1110, 1114, (9th Cir. 1992). Plaintiffs' suggestion that the Court invite a visiting judge from the Ninth Circuit to preside over their trial is simply preposterous.

Therefore, it is ORDERED that Plaintiffs' motion for recusal is DENIED.

SIGNED November 17, 2000.

Terry R. Means
TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

TRM/val

14

ENTERED ON DOCKET
NOV 17 2000

ORIGINAL

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
NOV 17 2000
CLERK, U.S. DISTRICT COURT
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JAMES BOSWELL, ET AL. §
§
VS. § CIVIL ACTION 4:00-CV-1526-Y
§
GEORGE BUSH, ET AL. §

FINAL JUDGMENT

Pursuant to the order issued this same day, and Federal Rule of Civil Procedure 58,

It is hereby ORDERED, ADJUDGED, and DECREED that all claims in the above-styled and numbered cause are DISMISSED WITH PREJUDICE. All costs under 28 U.S.C. § 1920 shall be borne by the plaintiff.

SIGNED November 17, 2000.

Terry R. Means
TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

TRM/val

ENTERED ON DOCKET
NOV 17 2000
U.S. DISTRICT CLERK'S OFFICE

17

ORIGINAL

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
NOV 30 2000
CLERK, U.S. DISTRICT COURT
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JAMES BOSWELL, ET AL. §
§
VS. § CASE NO. 4:00-CV-1526-Y
§
GEORGE BUSH, ET AL. §

ORDER DENYING PLAINTIFFS' MOTIONS TO RECONSIDER

Pending before the Court are (1) Plaintiffs' "Motion for reconsideration of Judge Means [sic] rulings dated 17 November 2000"; (2) "Motion to consider inequitable conduct, voting intimidation, and obstruction to justice in the election 2000"; and (3) "Motion for expedited, emergency hearing and expedited processing of a case so that this court's ruling and abuse of discretion may be considered in the election 2000." Having carefully considered the motions, the Court finds that the motions should be DENIED. The Court refuses to entertain the wholly ridiculous assertion that Plaintiffs' lawsuit is related in any way to an alleged conspiracy involving the recent presidential election. The Court finds such vagaries to be irrational, paranoid, and utterly groundless.

Therefore, it is ORDERED that the plaintiffs' motions to reconsider are DENIED.

SIGNED November 29, 2000.

Terry R. Means

TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

TRM/val

ENTERED ON DOCKET
NOV 30 2000
U.S. DISTRICT CLERK'S OFFICE

23

N0 00-10698

In The U.S. Court of Appeals
For Fifth Circuit

JAMES DOUGLAS BOSWELL, PLAINTIFF - APPELLANT

VS

WILLIAM COHEN , THE SECRETARY OF DEFENSE; ET AL

TEXAS CHRISTIAN UNIVERSITY
WILLIAM E. TUCKER, DR CHANCELLOR
MICHAEL D. MCCRACKEN DEAN
DEFENDANTS -APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

FORT WORTH USDC No. 4:98 - CV-168-Y

APPELLANT RECORD EXCERPTS

In appeal of order denying motion to reopen case and related motions

James Douglas Boswell, Pro Se
414 Morrison Dr.
Euless TX 76039
817 358 9911
FAX 817 358 0291
Plaintiff - Appellant

APPEAL CLOSED

U.S. District Court
Northern District of Texas (Fort Worth)

CIVIL DOCKET FOR CASE #: 98-CV-168

Boswell v. Cohen, et al
Assigned to: Judge Terry R Means
Demand: $0,000
Lead Docket: None
Dkt# in other court: None

Filed: 02/23/98

Nature of Suit: 890
Jurisdiction: US Defendant

Cause: 42:1983 Civil Rights Act

JAMES D BOSWELL
plaintiff

James D Boswell
[COR LD NTC pse] [PRO SE]
414 Morrison Dr
Euless, TX 76039
USA
817/358-9911

v.

WILLIAM COHEN, The Secretary of Defense
defendant
[term 08/24/98]

R Wayne Hughes, Jr, Attorney at Law
[term 08/24/98]
817/978-3368 FAX
[COR LD NTC usa]
US Attorney's Office
Burnett Plaza
801 Cherry Street
Suite 1700
Fort Worth, TX 76102
USA
817/252-5200

TOGO WEST, The Secretary of the Army
defendant
[term 08/24/98]

R Wayne Hughes, Jr, Attorney at Law
[term 08/24/98]
(See above)
[COR LD NTC usa]

TEXAS CHRISTIAN UNIVERSITY
defendant

Robert L Ginsburg, Attorney at Law
817/334-0271 FAX
[COR LD NTC ret]
McDonald Sanders
Continental Plaza
777 Main Street

Certified a true copy of an instrument on file in my office on 7/18/00
NANCY DORERTY, Clerk, U.S. District Court, Northern District of Texas
By _____ Deputy

	Suite 1300 Fort Worth, TX 76102 USA 817/336-8651
WILLIAM E TUCKER, Dr, Chancellor defendant	Robert L Ginsburg, Attorney at Law (See above) [COR LD NTC ret]
MICHAEL D MCCRACKEN, Dean defendant	Robert L Ginsburg, Attorney at Law (See above) [COR LD NTC ret]
NATIONAL GUARD BUREAU defendant [term 08/24/98]	R Wayne Hughes, Jr, Attorney at Law [term 08/24/98] (See above) [COR LD NTC usa]

APPEAL

CLOSED

JAMES D BOSWELL

plaintiff

v.

WILLIAM COHEN, The Secretary of Defense; TOGO WEST, The Secretary of the Army; TEXAS CHRISTIAN UNIVERSITY; WILLIAM E TUCKER, Dr, Chancellor; MICHAEL D MCCRACKEN, Dean; NATIONAL GUARD BUREAU

defendant

Proceedings include all events. APPEAL
4:98cv168 Boswell v. Cohen, et al

CLOSED

2/23/98	1	COMPLAINT filed; Filing Fee $ 150.00 Receipt # 24281 (25+) (geb) [Entry date 02/24/98]
2/23/98	2	SUMMONS(ES) issued for defendant William Cohen, defendant Togo West, defendant Texas Christian Univ, defendant William E Tucker, defendant Michael D McCracken, defendant National Guard Burea (geb) [Entry date 02/24/98]
2/26/98	3	SUMMONS(ES) issued for US Atty-FTW (1) (bam)
3/13/98	4	ANSWER to Complaint by Texas Christian Univ, William E Tucker, Michael D McCracken (Attorney Robert L Ginsburg), (10) (bam) [Entry date 03/16/98]
4/27/98	5	MOTION by William Cohen, Togo West, National Guard Burea to dismiss (2) (bam)
4/27/98	6	MEMORANDUM by William Cohen, Togo West, National Guard Burea in support of [5-1] motion to dismiss (15+) (bam)
5/26/98	7	ORDER TO SUBMIT JOINT STATUS REPORT AND PROPOSED DISCOVERY PLAN. Status report due on 6/25/98 (signed by TRM) Copies to counsel: 5/27/98 Page(s): 6 (bam) [Entry date 05/27/98]
5/27/98	8	ORDER granting [5-1] motion to dismiss by dfts Secy of Defense; Secy of Army; and Chief, Ntl Guard Bureau (signed by TRM) Copies to counsel: 5/27/98 Page(s) 1 (bam)
5/8/98	9	***UNFILED PER 6/9/98 ORDER***MOTION by James D Boswell to amend judgment-vacature of court order granting dfts motion to dismiss and motion giving notice of appeal (15+) (bam) [Edit date 06/09/98]
5/9/98	10	ORDER unfiling [9-1] motion to amend judgment-vacature of court order granting dfts motion to dismiss and motion giving notice of appeal by James D Boswell due to the following deficiency: Cert of Service, Cert of Conf, and Order... Copies to counsel: 6/9/98 (signed by Judge Terry R Means) Page(s) 2 (bam)
5/26/98	11	MOTION with memorandum in support by James D Boswell for vacature of court order graning dfts motion to dismiss (15+++) (bam)
7/15/98	12	MEMORANDUM OF POINTS AND AUTHORITIES by National Guard Burea, Secretary of Defense, Secretary of Army in support of dfts opposition to plfs motion to vacate the court order granting dfts motion to dismiss (6) (bam)
8/6/98	13	ORDER denying [11-1] motion for vacature of court order graning dfts motion to dismiss (signed by TRM) Copies to counsel: 8/6/98 Page(s) 1 (bam)

8/12/98	14	NOTICE OF APPEAL (15+) by plaintiff James D Boswell...from dismissal.... Fee payment amount: 105.00 Receipt # 26197; TO given, no hearings/trials held...Cys to Judge and all parties... Appeal record due on 8/27/98 (dld) [Entry date 08/13/98] [Edit date 08/13/98]
8/13/98	--	Notice of appeal and certified copy of docket to USCA: [14-1] appeal (dld)
8/14/98	15	ORDER re request for information, Court refers plf to Local Rules...Court is unable to provide further assistance...for procedural assistance a litigant may contact the clerk of court (signed by TRM) Copies to counsel: 8/14/98 Page(s) 1 (bam)
8/14/98	16	ORDER to show cause by plf why he failed to comply with the 5/26/98 order, and set plf filing deadline for 4:30 8/28/98 (signed by TRM) Copies to counsel: 8/14/98 Page(s) 1 (bam)
8/14/98	--	Transmitted record on appeal to U.S. Court of Appeals: [14-1] appeal consisting of Vol I & II of case papers which includes cert cy of docket entries; along with a transmittal letter. (eac)
8/21/98	17	RESPONSE by James D Boswell to [16-3] show cause order for failure to file joint discovery plan (10) (bam)
8/21/98	18	Justification to Compel US dfts to file joint discovery plan by James D Boswell (12) (bam)
8/24/98	19	ORDER resetting joint status report due for 4:30 9/1/98 denying [18-1] plfs motion to compel the govt dfts previously dismissed from this case, to file jt discovery plan (signed by TRM) Copies to counsel: 8/24/98 Page(s) 1 (bam)
8/24/98	--	USCA Case Number, 98-10939 Re: [14-1] appeal (csw)
9/1/98	20	JOINT STATUS REPORT AND PROPOSED DISCOVERY PLAN by James D Boswell, Texas Christian Univ, William E Tucker, Michael D McCracken (7) (bam)
9/3/98	21	INITIAL SCHEDULING ORDER setting Joining of Parties on 4:30 11/2/98 ; Amending of Pleadings on 4:30 1/4/99 ; Discovery cutoff 4:30 3/2/99 ; Deadline for filing of dispositive motions 4:30 4/1/99 ; Pretrial materials due on 4:30 1/4/99 Pretrial conference for 1:00 2/17/99 ; (signed by TRM) Copies to counsel: 9/3/98 Page(s): 3 (bam)

10/9/98	22	ORDER OF USCA (certified copy) Re: [14-1] appeal...in the absence of the district court not certifying the 5/27/98 order for appeal, 5th circuit has no basis upon wich either the 5/27 order of the 8/6 order can be appealed prior to the entry of a final jgm...appeal dismissed (2) (bam) [Entry date 10/13/98]
10/9/98	--	Record on appeal returned from U.S. Court of Appeals: [14-1] appeal...received 2 volumes case papers (bam) [Entry date 10/13/98]
10/20/98	23	MOTION by Texas Christian Univ for summary and final judgment (4) (bam) [Entry date 10/21/98]
10/20/98	24	MEMORANDUM by Texas Christian Univ in support of [23-1] motion for summary and final judgment (14) (bam) [Entry date 10/21/98]
10/20/98	25	APPENDIX by Texas Christian Univ in support of [23-1] motion for summary and final judgment (15+++) (bam) [Entry date 10/21/98]
11/3/98	26	MEMORANDUM by James D Boswell in support of plfs motions (1) to compel dfts to discovery and (2) to enlarge time for plf to respond to dfts motion for summary and final judgment (16) (bam) [Entry date 11/04/98]
11/4/98	27	ORDER granting [26-1] support memorandum of points in support of plfs motions to compel dfts to discovery and to enlarge time for plf to respond to dfts motion for summary and final jgm, and Response to motion reset to 12/31/98 for [23-1] motion for summary and final judgment, and parties are to confer and make effort to resolve discovery dispute and set discovery due for 11/13/98, and if parties resolve discovery dispute, plf to notify court, set filing deadline for 11/16/98...if parties resolve part, but not all discovery dispute, plf to file amended motion to remaining disputed matter by 4:30p.m. on 11/20/98 and dfts response to remaining discovery motions due by 4:30 on 11/30/98 (signed by TRM) Copies to counsel: 11/5/98 Page(s) 2 (bam) [Entry date 11/05/98]
11/16/98	28	RESPONSE by James D Boswell to [27-4] court order in reference to plfs motion to compel dfts to discovery (3) (bam) [Entry date 11/17/98]
11/18/98	29	ORDER mooting [26-1] support memorandum of points and authorities in support of plfs motion to compel dfts to discovery (signed by TRM) Copies to counsel: 11/18/98 Page(s) 1 (bam)
12/22/98	30	STIPULATION OF FACTS (2 pgs) by defendant Texas Christian Univ (dld)

12/29/98	31	MOTION (2 pgs) by plaintiff James D Boswell to enlarge time to respond to defendant's request for summary judgment (dld)
1/5/99	32	ORDER granting [31-1] motion to enlarge time to respond to defendant's request for summary judgment Plfs Response to motion reset to 1/29/99 for [23-1] motion for summary and final judgment (signed by TRM) Copies to counsel: 1/5/99 Page(s) 1 (bam)
1/29/99	33	ORDER granting [23-1] motion for summary and final judgment for reasons stated inthe brief in support of dft, TCU's motion (signed by TRM) Copies to counsel: 2/1/99 Page(s) 4 (bam) [Entry date 02/01/99]
1/29/99	34	FINAL JUDGMENT...all claims are dismissed w/prejudice and costs of court shall be borne by plf (signed by TRM) Copies to counsel: 2/1/99 Page(s): 1 (bam) [Entry date 02/01/99]
1/29/99	--	Case closed (bam) [Entry date 02/01/99]
2/1/99	35	MOTION by James D Boswell to enlarge time by one day to respond to dfts motionfor summary and final judgment (3) (bam) [Entry date 02/02/99]
2/2/99	36	ORDER denying [35-1] motion to enlarge time by one day to respond to dfts motion for summary and final judgment (signed by TRM) Copies to counsel: 2/2/99 Page(s) 1 (bam)
2/8/99	37	***UNFILED PER 2/9/99 ORDER***MOTION by James D Boswell for scheduling of two Hearings: 1) resolution of issues prior to summary and final judgment and 2) the summary and final judgment hearing (6) (bam) [Entry date 02/09/99] [Edit date 02/10/99]
2/8/99	38	***UNFILED PER 2/9/99 ORDER***MOTION by James D Boswell to compel defendant's to discovery (6) (bam) [Entry date 02/09/99] [Edit date 02/10/99]
2/8/99	39	***UNFILED PER 2/9/99 ORDER***MOTION by James D Boswell to take judicial notice and grant hearing (6) (bam) [Entry date 02/09/99] [Edit date 02/10/99]
2/8/99	40	***UNFILED PER 2/9/99 ORDER***MOTION by James D Boswell to vacate [36-1] order denying plf to enlarge time to respond to summary and final judgment (6) (bam) [Entry date 02/09/99] [Edit date 02/10/99]
2/8/99	41	***UNFILED PER 2/9/99 ORDER***MOTION by James D Boswell for continuance (6) (bam) [Entry date 02/09/99] [Edit date 02/10/99]

2/9/99	42	NOTICE OF APPEAL by James D Boswell and appealing 1/29/99 final judgment...plf is pro se...no hearing/trial held...TO given to plf...no pymt made (15+++) (bam)
2/9/99	43	ORDER unfiling [41-1] motion for continuance by James D Boswell due to the following deficiency: Cert of Conference Copies to counsel: 2/10/99 (signed by Judge Terry R Means) Page(s) 2 (bam) [Entry date 02/10/99]
2/9/99	44	ORDER unfiling [40-1] motion to vacate [36-1] order denying plf to enlarge time to respond to summary and final judgment by James D Boswell due to the following deficiency: Cert of Conference Copies to counsel: 2/10/99 (signed by Judge Terry R Means) Page(s) 2 (bam) [Entry date 02/10/99]
2/9/99	45	ORDER unfiling [39-1] motion to take judicial notice and grant hearing by James D Boswell due to the following deficiency: Cert of conference Copies to counsel: 2/10/99 (signed by Judge Terry R Means) Page(s) 2 (bam) [Entry date 02/10/99]
2/9/99	46	ORDER unfiling [37-1] motion for scheduling of two Hearings: 1) resolution of issues prior to summary and final judgment and 2) the summary and final judgment hearing by James D Boswell due to the following deficiency: Cert of Conference Copies to counsel: 2/10/99 (signed by Judge Terry R Means) Page(s) 2 (bam) [Entry date 02/10/99]
2/9/99	47	ORDER unfiling [38-1] motion to compel defendant's to discovery by James D Boswell due to the following deficiency: Cert of Conference Copies to counsel: 2/10/99 (signed by Judge Terry R Means) Page(s) 2 (bam) [Entry date 02/10/99]
2/10/99	--	Notice of appeal and certified copy of docket to USCA: [42-1] appeal...along with a transmittal letter (csw)
2/16/99	48	MOTION by James D Boswell to vacate [36-1] order denying plf time to respond to summary and final judgment, and to certify order as appealable (8) (bam) [Entry date 02/17/99]
2/16/99	49	MOTION by James D Boswell to compel dfts to discovery (6) (bam) [Entry date 02/17/99]
2/16/99	50	MOTION by James D Boswell for scheduling of two Hearings: 1) Resolution of issues prior to summary and final judgment and 2) Summary and final judgment hearing (6) (bam) [Entry date 02/17/99]
2/16/99	51	MOTION by James D Boswell for continuance for additional discovery (6) (bam) [Entry date 02/17/99]

2/16/99	52	MOTION by James D Boswell to take judicial notice and grant hearing (6) (bam) [Entry date 02/17/99]
2/16/99	--	USCA appeal fees received $ 105.00 [42-1] appeal receipt #28107 from James Boswell. (csw) [Entry date 02/17/99]
2/22/99	53	Transcript order form: Transcript not requested [42-1] appeal (dld)
2/23/99	--	USCA Case Number, 99-10161 Re: [42-1] appeal (csw) [Entry date 02/24/99]
3/5/99	54	ORDER denying [48-2] motion to certify order as appealable, denying [48-1] motion to vacate [36-1] order denying plf time to respond to summary and final judgment, denying [49-1] motion to compel dfts to discovery, denying [50-1] motion for scheduling of two Hearings: 1) Resolution of issues prior to summary and final judgment and 2) Summary and final judgment hearing, denying [51-1] motion for continuance for additional discovery, denying [52-1] motion to take judicial notice and grant hearing (signed by TRM) Copies to counsel: 3/5/99 Page(s) 3 (bam)
3/16/99	--	Transmitted record on appeal to U.S. Court of Appeals: [42-1] appeal re: # 99-10161...consisting of Vol I, II, III, IV, V, & VI of case papers which includes cert cy of docket entries; along with a transmittal letter. (eac)
6/25/99	55 1516	ORDER OF USCA (certified copy) USCA #99-10161 Re: [42-1] appeal...ordered that the motion of appellee William Cohen, appellee National Guard Bureau, appellee Louis Caldera to dismiss the appeal as it pertains to them for lack of jurisdiciton is Granted. (Appeal remains open as to appellees Texas Christian University, William E Tucker, and Michael McCracken per USCA5 6/22/99) Copy to Judge (1) (csw) [Entry date 06/28/99]
1/18/00	56 1517	**UNFILED PER ORDER 1/25/00**MOTION by James D Boswell for reconsideration of [34-1] judgment orde, for relief of summary judg. & for leave to file suppl. pleading (to Reopen Case for New Evidence) (15+) (Under separate cover) (pdm) [Entry date 01/19/00] [Edit date 01/25/00]
1/25/00	57 1518	ORDER unfiling [56-1] motion for reconsideration of [34-1] judgment orde, for relief of summary judg. & for leave to file suppl. pleading by James D Boswell due to the following deficiency: Separate docs. not identified, no cert. of conf., appeal still pending as to defts. TCU, William Tucker, & Michael McCracken; Copies to counsel: 1/25/00 (signed by Judge Terry R Means) Page(s) 2 (pdm)

3/30/00	58	1521	JUDGMENT OF USCA (certified copy) USCA #99-10161 Re: [42-1] appeal...ordered and adjudged by this Court that the appeal in this cause is dismissed for lack of jurisdiction. Further ordered that pla-appellant pay to dft-appellees the costs on appeal to be taxed by the Clerk of this Court. Issued as mandate on 03/27/00. Copy to Judge. (1) (csw) [Entry date 03/31/00]
3/30/00	59	1522	OPINION OF USCA (certified copy) USCA #99-10161 in accordance with USCA judgment re: appeal dismissed. Copy to Judge. (2) (csw) [Entry date 03/31/00]
3/30/00	--		Record on appeal returned from U.S. Court of Appeals: USCA #99-10161..consisting of 6 vol case papers. (csw) [Entry date 03/31/00]
4/7/00	--		Received letter from USCA #99-101[illegible] Re: James Boswell...receipt #051031 verify[illegible] payment of sanctions has been issued by this court. Copy of letter to advise DC that the sanction has been satisfied. Copy to Judge. (1) (csw)
4/17/00	60	1524	MOTION by plaintiff James D Boswell to reopen case for additional evidence, for relief from summary and final judgment, to file supplemental pleading, for court-appointed attorney,and for continuance in forma pauperis (15+pgs) (fba) [Entry date 05/12/00]
5/12/00	61	2071	ORDER denying [60-1] motion to reopen case for additional evidence, denying [60-2] motion for relief from summary and final judgment, denying [60-3] motion to file supplemental pleading, denying [60-4] motion for court-appointed attorney, denying [60-5] motion for continuance in forma pauperis (signed by TRM) Copies to counsel: 05/12/00 Page(s) 1 (fba)
6/29/00	62	2073	NOTICE OF APPEAL and Memorandum in Support by plaintiff James D Boswell re [61-1] order; Fee is due; No Hearing/Trl Held; CTJ (15+pgs) (fba)
6/30/00	--		Notice of appeal and certified copy of docket to USCA: [62-1] appeal along with a transmittal letter. (csw)
7/14/00	--		USCA appeal fees received $ 105.00 [62-1] appeal (dld) [Entry date 07/17/00]
7/14/00	--		USCA Case Number, 00-10698 Re: [62-1] appeal (dld) [Entry date 07/17/00]
7/18/00	--		Transmitted record on appeal to U.S. Court of Appeals: [62-1] appeal re: # 00-10698...consisting of Vol I-IX of case papers which includes cert cy of docket entries; along with a transmittal letter. (eac)

FILED
MAY - 12 2000
NANCY DOHERTY, CLERK
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JAMES D. BOSWELL	§	
	§	
VS.	§	CIVIL ACTION NO. 4:98-CV-168-Y
	§	
SECRETARY OF DEFENSE, ET AL.	§	

ORDER DENYING MOTION TO REOPEN CASE AND RELATED MOTIONS

Pending before the Court are the following motions submitted by plaintiff James D. Boswell, filed April 17, 2000: (1) motion to reopen case for additional evidence; (2) motion for relief from summary and final judgment; (3) motion to file supplemental pleading; (4) motion for court-appointed attorney; and (5) motion for continuance *in forma pauperis*. Having carefully considered the motions, the Court finds that they are without merit and should be DENIED.

Therefore, it is ORDERED that the above-listed motions are hereby DENIED.

SIGNED May 12, 2000.

TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

TRM/val

ENTERED ON DOCKET
MAY 12 2000
U.S. DISTRICT CLERK'S OFFICE

101

CASE: 4:98-cv-00168
DOCUMENT: 61
DATE: 05/12/00

CLERK: fba

CERTIFICATE OF PROOF OF SERVICE FOR AMENDMENT TO APPENDIX FOR THE **PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT** IN THE SUPREME COURT OF THE UNITED STATES

JAMES D. BOSWELL, Individually and on behalf of all others similarly situated; VANESSA LACE BOSWELL, Individually and on behalf of all others similarly situated; SHAUNA MROSKI, Individually and on behalf of all others similarly situated

Plaintiffs-Appellants-Petitioner

v.

BOARD OF TRUSTEES TEXAS CHRISTIAN UNIVERSITY (individual members (in their official capacities only); GEORGE BUSH, Governor, individual and official capacity; DANIEL JAMES, Major General, Adjutant General of Texas, LOUIS CALDERA, Secretary of the Army, National Guard Bureau Agency,

Defendants-Appellees-Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH

USDC No. 4:00 - CV-1526-Y, Fifth Circuit N0 00-11360 and USDC No. 4:98-CV-168-Y No-00-10698

I do declare this amendment was served by certified priority mail, return receipt requested to Texas Christian University Defendants is Richard De Berry, McDonald and Sanders, 1300 Continental Plaza, 777 Main Street, Ft Worth Texas 76102 (817 336 8651) and for United States Defendants is Wayne Hughes, Jr. Assistant United States Attorney, 801 Cherry St. Suite 1700, Ft Worth Tx 76102-6897 (817 252 5200), and for Texas Government employees, Mr. Peter J. Strelitz, Capitol Station, PO Box 12548, Austin Texas, 78711-2548 (512 463 2120) on this date 27 December 2001. I declare under the penalty of perjury that the forgoing is true.

James Boswell

James Douglas Boswell, Pro Se
414 Morrison Dr.
Euless TX 76039
817 358 9911 fax 817 358 0291